



DEPARTMENT OF JUSTICE

Antitrust Division

***United States v. Cargill Meat Solutions Corp., et al.*; Proposed Final Judgments and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that proposed Final Judgments, Stipulations, and a Competitive Impact Statement have been filed with the United States District Court for the District of Maryland in *United States of America v. Cargill Meat Solutions Corp., et al.*, Civil Action No. 1:22-cv-01821. On July 25, 2022, the United States filed a Complaint alleging that three poultry processors (Cargill, Sanderson Farms, and Wayne Farms), as part of a conspiracy with other poultry processors that together employ more than 90 percent of all poultry processing plant workers in the United States, conspired to collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits, and to exchange information about current and future compensation plans for their processing plant workers, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint also alleges that data consultants, including WMS & Co. and its CEO, G. Jonathan Meng, facilitated the processors' collaboration and compensation information exchanges, in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgments, filed at the same time as the Complaint, require Cargill, Sanderson Farms, Wayne Farms, WMS, and Meng to cease their information-sharing and facilitation of such conduct. In addition, the settling defendants are prohibited from sharing or facilitating the sharing of competitively sensitive information among competitors and required to cooperate with the United States' ongoing investigation. Additionally, under the terms of the proposed settlement with Cargill, Sanderson Farms, and Wayne Farms, the court will appoint an external monitor to ensure compliance with

the terms of the settlement and the antitrust laws. Cargill, Sanderson Farms, and Wayne Farms will also pay restitution to affected poultry processing workers.

Copies of the Complaint, proposed Final Judgments, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Maryland. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the *Federal Register*. Comments should be submitted in English and directed to Lee Berger, Chief, Civil Conduct Task Force, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8600, Washington, DC 20530 (email address: Lee.Berger@usdoj.gov).

Suzanne Morris,
*Chief, Premerger and
Division Statistics,
Antitrust Division.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA
450 Fifth Street NW
Washington, DC 20530,

Plaintiff;

v.

CARGILL MEAT SOLUTIONS
CORPORATION
825 East Douglas Avenue, 9th Floor
Wichita, KS 67202,

CARGILL, INC.
15407 McGinty Road West
Wayzata, MN 55391,

G. JONATHAN MENG
734 Wild Rose Road
Silverthorne, CO 80498,

SANDERSON FARMS, INC.
127 Flynt Road
Laurel, MS 39443,

WAYNE FARMS, LLC
4110 Continental Drive
Oakwood, GA 30566,

WEBBER, MENG, SAHL AND
COMPANY, INC. d/b/a/ WMS &
COMPANY, INC.
1200 E. High Street, Suite 104
Pottstown, PA 19464,

Defendants.

Civil Action No.: 22-cv-1821
(Gallagher, J.)

COMPLAINT

Americans consume more poultry than any other animal protein. Before poultry is prepared for consumption, it passes through a complex supply chain that includes hatcheries that hatch chicks from eggs; growers that raise poultry until the birds are ready for slaughter; and poultry processing plants where workers perform dangerous tasks under difficult conditions to slaughter and pack chickens and turkeys for distribution to consumers.

Poultry processing plant workers deserve the benefits of free market competition for their labor. For at least two decades, however, poultry processors that employ more than 90 percent of all poultry processing plant workers in the United States conspired to (i) collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits; (ii) exchange information about current and future compensation plans; and (iii) facilitate their collaboration and information exchanges through data consultants. This conspiracy distorted the normal bargaining and compensation-setting processes that would have existed in the relevant labor markets, and it harmed a generation of poultry processing plant workers by artificially suppressing their compensation.

Poultry processors have also engaged in deceptive practices associated with the “tournament system.” Under this system, growers are penalized if they underperform other growers, but poultry processors control the key inputs (like chicks and seed) that often determine a grower’s success. Poultry processors often fail to disclose the information that growers would need to evaluate and manage their financial risk or compare offers from competing processors.

The United States of America brings this civil action under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 202(a) of the Packers and Stockyards Act, 7 U.S.C. § 192(a), to enjoin this unlawful conduct.

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I. NATURE OF THE ACTION

1. From chicken noodle soup to golden-roasted Thanksgiving turkey, Americans love to eat poultry. Americans consume more poultry than any other animal protein, including beef and pork.

2. By the time poultry is served in a home kitchen, restaurant, or school cafeteria, it has passed through a complex supply chain that includes hatcheries, growers (i.e., farmers who raise live poultry for meat or eggs), and poultry processors, which employ hundreds of thousands of workers who process chicken or turkey for distribution to customers or secondary processing plants.

3. Poultry processing plant workers play a vital role in the poultry meat supply chain. These workers catch, slaughter, gut, clean, debone, section, and pack chickens and turkeys into saleable meat. Many of them withstand physically demanding and often dangerous working conditions. For example, a “live hanger” in a poultry processing plant grabs, lifts, and hangs for slaughter about 30 living birds per minute, as each bird claws, bites, and flaps its wings. These workers risk injuries ranging from exhaustion to mutilation to provide for themselves and their families. In doing so, they help make food available to families nationwide.

4. Like all workers, poultry processing plant workers deserve the benefits of free market competition for their labor, including wages and benefits that are set through a competitive process that is free from anticompetitive coordination between employers. Instead, for at least the past 20 years, poultry processors that dominate local employment markets for poultry processing plant workers and employ more than 90 percent of all such workers in the United States collaborated on and assisted each other with compensation decisions. Their conspiracy included sharing data and other information—directly and through consultants—about their current and future compensation plans. Rather than make compensation decisions independently, these processors chose to help

each other at the expense of their workers. As a result, they artificially suppressed compensation in the labor markets in which they compete for poultry processing plant workers, and deprived a generation of poultry processing plant workers of fair pay set in a free and competitive labor market.

5. Through communications over decades, which occurred in large groups, small groups, and one-to-one, these poultry processors agreed that they would assist each other by discussing and sharing information about how to compensate their poultry processing plant workers. As one poultry processor wrote to another about sharing wage rates, “I am interested in sharing this information with you. . . . I am hoping we can develop a collaborative working relationship.” The poultry processors’ collaboration on compensation decisions, including their exchange of compensation information, took many forms over the years of the conspiracy. For example:

a. An employee of one poultry processor emailed eight competitors that “It’s that time of year already” and requested “your companies projected salary budget increase recommendation.” Her coworker added, “Seriously -any info you can give us will be helpful.”¹

b. A group of competing poultry processors exchanged “disaggregated raw [identifiable] data regarding the compensation of hourly-paid workers . . . broken down by plant and location”; base pay and bonuses “for each specific salaried position” included in their survey; any “planned increase in the salary range for the current budget year”; any “planned increase in the salary range for the next budget year”; the dates of planned future increases; and “disaggregated, raw data for some benefits.” Employees of these poultry processors then met in person and discussed specific compensation, including attendance bonuses and overtime work payments.

¹ In quotes throughout the Complaint, all spelling and grammatical errors are transcribed as they were found in the primary source text, without [*sic*] notions.

c. When one poultry processor human resources employee emailed two competitors to ask “what your starting rate is for these kids hired right out of college,” she noted in the same correspondence that her employer was “in the midst of completely revamping our Plant Management Trainee program.” Without further prompting, her competitor shared detailed wage information for its Beginner and Advanced Trainee program.

d. One poultry processor emailed others, “I had a question for the group also. We are trying to determine what is reasonable for salaried employee to be compensated for working 6 and/or 7 days in a work week when the plant is running. . . Do you pay extra for these extra days worked for salaried (exempt) employees?” and “If so, how is that calculated?”

e. Nearly the entire poultry industry has subscribed to exchanges of information through a data consultant that includes compensation information that is so disaggregated that industry participants could determine the wages and benefits their competitors pay for specific positions at specific plants across the country.

6. These collaborations demonstrate a clear agreement between competitors to ask for help with compensation decisions and to provide such help to others upon request. As part of this agreement to collaborate, the poultry processors shared information about *current* and *future* compensation decisions. They also shared *disaggregated* and *identifiable* information, which could readily be traced to a particular competitor or even a particular plant.

7. Even apart from their collaboration on compensation decisions, the poultry processors’ information exchanges—standing alone—also violated the Sherman Act. The poultry processors, both directly and through data consultants, shared compensation information so detailed and granular that the poultry processors could determine the wages and benefits their competitors were paying—and planning to pay—for specific job

categories at specific plants. The compensation information the poultry processors exchanged allowed them to make compensation decisions that benefited themselves as employers and suppressed competition among them for workers.

8. Defendants Cargill Meat Solutions Corporation and Cargill, Inc. (together, “Cargill”), Sanderson Farms, Inc. (“Sanderson”), Wayne Farms, LLC (“Wayne”), Webber, Meng, Sahl & Co., Inc. (“WMS”), and WMS President G. Jonathan Meng participated in this unlawful conspiracy, together with other poultry processors and another consulting firm.²

9. The poultry processors kept their collaboration and information exchanges secret in an attempt to hide their anticompetitive conduct. As a condition for membership in the survey exchange facilitated by one data consultant, the poultry processors promised that they would keep the compensation information exchanged confidential. When the survey group members met to collaborate on compensation decisions, they asked and expected the data consultant to leave the room when they discussed current and future compensation decisions. Even when one processor left the survey due to legal concerns in 2012, the poultry processors did not end their anticompetitive conduct; the other survey participants continued collaborating and exchanging information.

10. When antitrust authorities and private class-actions began to surface anticompetitive conduct in other parts of the poultry industry, the poultry processors grew alarmed about the risk that their conspiracy would be found out. One of them warned the others about “a private investigator” who was asking “questions about the types of information we shared at our meeting, the survey and other questions that I will simply call ‘general anti-trust fishing’ questions. . . . So just a little reminder that the bad-guys are still out there, and why we hold strict confidences about discussing wages.”

² The Complaint labels conspirators other than the Defendants with pseudonyms because the United States has an ongoing investigation into this conduct.

11. For at least two decades, poultry processors that dominated local markets for poultry processing plant work and controlled more than 90 percent of poultry processing plant jobs nationwide agreed to help each other make decisions about current and future compensation for their hourly and salaried plant workers, to exchange information about current and future compensation decisions, and to facilitate such exchanges through data consultants. The processors used the information they received through their collaboration and exchanges to make decisions on compensation for their workers. Indeed, they found it so useful that when fear of antitrust liability finally motivated several poultry processors to remove disaggregated compensation information from their exchanges, one processor complained that the new survey “has suffered significant obscuring of results . . . and I would ask – is it still useful information any longer?”

12. The agreement to collaborate on compensation decisions and exchange information had the tendency and effect of suppressing competition for poultry processing workers and thereby suppressing these workers’ compensation. The poultry processors’ conspiracy is a scheme among competing buyers of labor that collectively possess market power over the purchase of poultry processing plant labor. By conspiring on decisions about compensation, these firms, with the assistance of consultants, collaborated to control the terms of employment of poultry processing plant jobs. Ultimately, the conspiracy gave the poultry processors the ability to suppress competition and lower compensation below the levels that would have prevailed in a free market.

13. The agreement to collaborate with and assist competing poultry processors in making compensation decisions, to exchange compensation information, and to facilitate this conduct through consultants is an unlawful restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. It should be enjoined.

14. Defendants Sanderson and Wayne have further acted deceptively to their growers, the farmers responsible for raising the poultry for slaughter. These Defendants compensate their growers through the “tournament system,” under which growers’ base compensation is adjusted up or down depending on how each grower performs relative to others on defined metrics. But Sanderson and Wayne supply growers with the major inputs that contribute to growers’ performance, such as chicks and feed, and these Defendants’ contracts with growers omit material information about the variability of the inputs provided to growers. Because Sanderson and Wayne do not adequately disclose the risk inherent in their tournament systems to growers, growers cannot reasonably evaluate the range of potential financial outcomes, manage their risks, or compare competing poultry processors. This failure to disclose is deceptive and violates the Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 192(a). These deceptions should be enjoined.

II. JURISDICTION AND VENUE

15. Each Defendant has consented to personal jurisdiction and venue in the District of Maryland.³

16. Defendants WMS and Meng sell services to clients throughout the United States, including in Maryland. WMS’s and Meng’s services included collecting, compiling, and providing data on poultry processing worker compensation across the United States, including information about poultry processing workers in Maryland.

³ In addition, Defendant Cargill, Inc. owns and operates facilities, and employs workers, in Maryland. Processor Co-Conspirator 14a and Processor Co-Conspirator 14b reside in Maryland. Processor Co-Conspirator 14b owns poultry processing plants and employs and compensates the company’s plant workers located in Maryland, while Processor Co-Conspirator 14a sets compensation for its plant workers working in Maryland. Processor Co-Conspirator 2 also owns and operates poultry plants in Maryland, at which it compensates its plant workers. Defendants WMS and Meng sold services to Processor Co-Conspirators 14a, 14b, and 2.

17. Defendants Cargill, Sanderson, and Wayne sell poultry meat throughout the United States. As of 2022, poultry processing in the U.S. was a \$30 billion industry. Each of these three Defendants is engaged in interstate commerce and activities that substantially affect interstate commerce. The collaboration between these Defendants in making compensation decisions, including through exchanges of processing plant compensation information that involved all Defendants, also substantially affects interstate commerce.

18. The Court has subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1337, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Defendants from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

19. Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(b), and (c) because one or more of the Defendants and co-conspirators transacted business, was found, and/or resided in this District; a substantial part of the events giving rise to the United States' claim arose in this District; and a substantial portion of the affected interstate trade and commerce described herein has been carried out in this District. The Court has personal jurisdiction over each Defendant under 15 U.S.C. §§ 22, 5.

20. Regarding violations by Defendants Sanderson and Wayne of the Packers and Stockyard Act, 1921, as amended and supplemented, 7 U.S.C. § 181 *et seq.*, the Court has jurisdiction under 28 U.S.C. § 1345 and 7 U.S.C. § 224.

III. TERMS OF REFERENCE

21. This Complaint refers to the consultants and poultry processors involved in the conspiracy as follows:

22. The consultant conspirators include Defendants WMS and G. Jonathan Meng (together, the “Consultant Defendants”) and Consultant Co-Conspirator 1.⁴

23. The poultry processor conspirators include Cargill, Sanderson, and Wayne (together, the “Processor Defendants”), and Processor Co-Conspirators 1 through 18, inclusive, which are distinct poultry processing companies. Processor Co-Conspirators 8, 14, and 18 include subsidiaries that were also involved in the conspiracy. These subsidiaries are identified, when relevant, through letter notation (e.g., Processor Co-Conspirator 8a or 14b).

24. The Processor Defendants, together with Processor Co-Conspirators 1 through 18, inclusive, are the “Processor Conspirators.”

25. Acts in furtherance of the conspiracy to collaborate with and assist competitors, to exchange information, and to facilitate such collaboration and exchanges can be summarized as detailed on the following page:

⁴ As noted above, co-conspirators have been designated with pseudonyms because the United States has an ongoing investigation into this conduct.

CONDUCT INVOLVED IN CONSPIRACY	
Descriptor	Anticompetitive Conduct
<p>Collaboration on Compensation Decisions (“Collaboration Conduct”)</p>	<p>Poultry processors attended in-person meetings and engaged in direct communications with their competitors to collaborate with and assist each other in making compensation decisions, including through the direct exchange of compensation information and the indirect exchange of such information facilitated by consultants WMS and Consultant Co-Conspirator 1.</p> <p>Such compensation decisions and compensation information exchanges included current and future, disaggregated, and identifiable confidential compensation information related to poultry processing plant workers.</p> <p>This collaboration was anticompetitive, and it suppressed poultry processing plant worker compensation.</p> <p><i>Period: 2000 or earlier to present</i></p>
<p>Exchange of Compensation Information Facilitated by WMS (“WMS Exchange”)</p>	<p>As part of the Processor Conspirators’ conspiracy to collaborate on compensation decisions, they paid Defendants WMS and Jonathan Meng to facilitate a poultry processing plant worker compensation survey, designed and with rules set by the Processor Conspirators, which included the exchange of current and future, disaggregated, and identifiable confidential compensation information related to poultry processing plant workers.</p> <p>This exchange was anticompetitive, and it suppressed poultry processing plant worker compensation.</p> <p><i>Period: 2000 or earlier to 2020</i></p>
<p>Exchange of Compensation Information Facilitated by Consultant Co-Conspirator 1 (“Consultant Co-Conspirator 1 Exchange”)</p>	<p>As part of the Processor Conspirators’ conspiracy to collaborate on compensation decisions, they submitted to and purchased from Consultant Co-Conspirator 1 current, disaggregated, and identifiable confidential compensation information related to poultry processing plant workers.</p> <p>This exchange was anticompetitive, and it suppressed poultry processing plant worker compensation.</p> <p><i>Period: 2010 or earlier to present</i></p>

IV. DEFENDANTS

A. Cargill

26. Cargill Meat Solutions Corporation is a Delaware company headquartered in Wichita, Kansas. Cargill Meat Solutions Corporation owns poultry processing plants, employs and compensates the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States. Cargill Meat Solutions Corporation participated in the anticompetitive compensation information exchanges with representatives of its competitors for poultry processing plant workers.

27. Cargill, Inc. is a privately-held company headquartered in Wayzata, Minnesota. Cargill, Inc. is the parent company of Cargill Meat Solutions Corporation. Cargill, Inc. participated in the anticompetitive compensation information exchanges with representatives of its competitors for poultry processing plant workers.

28. Defendants Cargill, Inc. and Cargill Meat Solutions Corporation are referred to collectively as “Cargill,” unless otherwise noted for specificity.

29. From at least 2000 until the present, Cargill participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the following conduct in the following years:

- a. Collaboration Conduct: at least 2000 to present;
- b. WMS Exchange: 2000-2019; and
- c. Consultant Co-Conspirator 1 Exchange: 2010 to present.

30. As a result of its anticompetitive conduct, Cargill set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

B. Wayne

31. Wayne is a Delaware company headquartered in Oakwood, Georgia. Continental Grain Company is the controlling shareholder of Wayne. Wayne owns poultry processing plants, employs and compensates the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States.

32. From at least 2000 until the present, Wayne participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the following conduct in the following years:

- a. Collaboration Conduct: at least 2000 to present;
- b. WMS Exchange: 2000-2019; and
- c. Consultant Co-Conspirator 1 Exchange: 2010 to present.

33. As a result of its anticompetitive conduct, Wayne set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

C. Sanderson

34. Sanderson is a publicly-held Mississippi company headquartered in Laurel, Mississippi. Sanderson owns poultry processing plants, employs and compensates

the workers in these plants, and employs executives and other representatives that set compensation for its plant workers throughout the United States.

35. From at least 2000 until the present, Sanderson participated in the anticompetitive agreement to collaborate with and assist its competitors in making decisions about compensation for poultry processing plant workers, including through the exchange of current and future, disaggregated, and identifiable wage and benefit information, by engaging in the following conduct in the following years:

- a. Collaboration Conduct: at least 2000 to present;
- b. WMS Exchange: 2000-2011; and
- c. Consultant Co-Conspirator 1 Exchange: 2010 to present.

36. As a result of its anticompetitive conduct, Sanderson set and paid artificially suppressed wages and benefits for its hourly and salaried poultry processing plant workers.

D. WMS

37. WMS is a Pennsylvania corporation located in Pottstown, Pennsylvania. WMS provides compensation consulting services, including through the use of compensation surveys, for clients in a broad range of industries.

38. From 2000 to 2020, WMS administered surveys that facilitated the Processor Conspirators' conspiracy by gathering, sorting, and disseminating disaggregated and identifiable information about current and future compensation for poultry processing plant workers.

39. From 2000 to 2002 and 2004 to 2019, WMS also facilitated, supervised, and participated in in-person meetings at which the Processor Conspirators assembled to discuss current and future, disaggregated, and identifiable poultry processing plant worker compensation decisions and information.

40. Through its administration of surveys and participation at annual in-person meetings of the Processor Conspirators, WMS facilitated the Processor Conspirators' sharing of their confidential, competitively sensitive information about compensation for poultry processing plant workers.

41. WMS's involvement in this conspiracy artificially suppressed compensation for poultry processing plant workers.

E. Jonathan Meng

42. G. Jonathan Meng is an individual residing in the State of Colorado. Since 2000, Meng has been the President of WMS.

43. From 2000 to the present, Meng has had primary responsibility at WMS for designing and presenting compensation surveys, collecting survey data, developing new clients, maintaining client relationships, and obtaining payment for services rendered.

44. Meng personally administered and supervised WMS's surveys, which disseminated the Processor Conspirators' current and future, disaggregated, and identifiable information about compensation for poultry processing plant workers.

45. From 2000 until 2019, Meng, representing WMS, also facilitated, supervised, and participated in in-person meetings at which the Processor Conspirators assembled to discuss current and future, disaggregated, and identifiable poultry processing plant worker compensation information.

46. By administering and supervising the surveys and meetings of the poultry processing defendants, Meng facilitated the Processor Conspirators' sharing of confidential, competitively sensitive information about compensation for poultry processing plant workers.

47. Meng's facilitation of this conspiracy artificially suppressed compensation for poultry processing plant workers.

F. Co-conspirators

48. Several entities conspired with the Defendants during the following years to collaborate with and assist competing poultry processors in making compensation decisions, to exchange compensation information, and to facilitate this conduct: Consultant Co-Conspirator 1 (at least 2010 to the present); Processor Co-Conspirator 1 (at least 2002 to the present); Processor Co-Conspirator 2 (at least 2015 to the present); Processor Co-Conspirator 3 (at least 2010 to the present); Processor Co-Conspirator 4 (at least 2004 to the present); Processor Co-Conspirator 5 (at least 2014 to the present); Processor Co-Conspirator 6 (at least 2000 to the present); Processor Co-Conspirator 7 (at least 2000 to the present); Processor Co-Conspirator 8 (at least 2005 to the present); Processor Co-Conspirator 9 (at least 2014-2015); Processor Co-Conspirator 10 (at least 2009 to the present); Processor Co-Conspirator 11 (at least 2005 to the present); Processor Co-Conspirator 12 (at least 2010 to the present); Processor Co-Conspirator 13 (at least 2009 to the present); Processor Co-Conspirator 14 (at least 2000 to the present); Processor Co-Conspirator 15 (at least 2000 to the present); Processor Co-Conspirator 16 (at least 2014 to the present); Processor Co-Conspirator 17 (at least 2019 to the present); and Processor Co-Conspirator 18 (at least 2000 to the present).

V. FACTUAL ALLEGATIONS

A. Poultry Industry Background

1. Hatcheries and Growers

49. Poultry are domesticated fowl, including chicken and turkey, bred for their meat and eggs.

50. Poultry processors own hatcheries, in which they hatch chicks or poults (baby turkeys) from eggs. Poultry processors supply these young birds to growers. Growers are farmers who raise the birds to specifications set by, and with feed and supplies provided by, the poultry processors with which they contract. When the growers

have finished raising the birds and the birds are ready for slaughter, the processors pay the growers for their services per pound of poultry.

51. This arrangement allocates substantial risk to growers. Many poultry processors historically compensate growers through a tournament system. Processors control the chicks or poults, feed, and other inputs that are supplied to growers. The grower, in addition to raising the chicks, often must make substantial financial investments to build or improve chicken barns to meet the processor's specifications. Growers are compensated through a base payment set in a contract between the processor and the grower. But the processor can adjust the base payment up or down based on how a grower compares to other growers (which the processor selects) on production and efficiency metrics. In practice, these "performance" adjustments make it very difficult for growers to project and manage the risk they face when entering a contract with a processor—particularly since processors control the key inputs to poultry growing.

52. Growers' contracts often do not disclose the true financial risk that the grower faces, including basic information like the number and size of flocks they are guaranteed. Similarly, growers often do not receive disclosures that would allow them to assess the tournament system. Growers often have little or no choice in which processor they contract with because there are limits to how far live poultry can be transported, and therefore only processors with nearby facilities are reasonable options.

2. Poultry Processing Plants

53. Once grown, the birds are packed into trucks and driven to primary poultry processing plants. Primary poultry processing plants tend to be built near hatcheries and growing facilities, which are usually in rural areas.

54. Once the birds arrive at primary processing plants, poultry processing plant workers take the birds from the trucks and hang, slaughter, clean, segment, and pack the meat. This work is generally performed on a poultry processing line, where

workers perform the same task repeatedly. Poultry processing plants are kept at cold temperatures to preserve the meat processed inside. The machinery necessary to process poultry carcasses and meat products is very loud, making it difficult for workers on the poultry processing line to hear and communicate. Slaughtering and packing poultry often results in blood and gore covering work surfaces and workers' protective gear. Moreover, the meat and byproducts of the slaughter process create a foul-smelling atmosphere that is slippery from fat, blood, and other byproducts and waste from the slaughter process.

55. Processing plants employ salaried workers to manage this slaughter process and ensure that the processing plants comply with relevant health and safety laws, among other things.

56. Meat from the birds slaughtered in primary processing plants is either sold to customers (e.g., grocery stores, restaurants, and other retailers) or sent to secondary processing plants at which the meat is further prepared for consumption, such as being sliced for deli packs or breaded.

3. Poultry Processing Plant Workers and Compensation

a. Poultry Processing Plant Work and Workers

57. According to the U.S. Bureau of Labor Statistics, over 240,000 people worked in the U.S. poultry processing industry as of June 2020. Some of these workers worked in Maryland.

58. Many poultry processing plant jobs require physical stamina because they are performed standing on the poultry processing line. These jobs also demand tolerance of unpleasant conditions including low temperatures, bad odors, blood and viscera, loud machinery noise, and, in some cases, dim lighting. Poultry processing plant work also can be dangerous, including because of the risk of injury from cutting instruments and repetitive-motion tasks. Many workers must stand on the processing line repeating the same rapid motions continuously. These motions can involve handling live, clawed birds,

heavy lifting, and the use of sharp cutting instruments, all of which are physically demanding and involve a high risk of injury.

59. In a competitive labor market, employers compete to attract and retain workers—much like manufacturers compete to attract potential customers in a downstream product market. Poultry processing plants compete with each other to attract workers who can perform this difficult work, and potential and current poultry processing plant workers seek out employers that will provide the best compensation for their labor.

60. Many jobs in poultry processing plants present unique characteristics that make it difficult for workers to switch to a different kind of job. The difficulty of switching to other jobs is enhanced by the specific skills developed and circumstances faced by workers in poultry processing firms. Workers in poultry processing plants often face constraints that reduce the number of jobs and employers available to them, limiting the number of competitors for their labor. Poultry processing plant workers also share common attributes that they bring with them to their jobs and develop common skills when performing these jobs. As a result of these poultry processing plant workers' common constraints, attributes, and skills, poultry processors are distinguishable from other kinds of employers from the perspective of poultry processing plant workers.

61. Common constraints facing poultry processing plant workers: Many poultry processing plant workers face constraints in finding employment that greatly restrict their job options. For these workers, poultry processing plants offer opportunities that are not available in other industries. Workers who cannot speak, read, or write English or Spanish, for example, can still perform poultry processing plant line work, which is primarily physical labor and done under conditions so loud as to make speaking and hearing difficult. Similarly, workers with criminal records, probation status, or lack of high school or college education are often able to work at poultry processing plants even when other jobs are not available to them. These workers distinguish poultry

processors, whose doors remain open to them, from employers in other industries, in which jobs are not available to them.

62. In addition, many poultry processing plants are located in rural areas, in which workers often have fewer job alternatives—especially for full-time, year-round work—as compared to workers in other areas.

63. Poultry processing workers' inability to access jobs in many, and sometimes any, other industries that would provide them with steady and year-round work is evidenced by the conditions these workers tolerate.

64. Common attributes of poultry processing plant jobs: As discussed above, poultry processing plant workers must be able to tolerate particularly challenging working conditions. An employer that requires a particular trait in its employees will generally recruit and retain workers with that trait by offering compensation or other inducements that are more attractive than those offered to these workers by employers that do not value that trait. This makes such an employer distinguishable and more appealing to such employees, who have that trait. The physical stamina and other attributes required for poultry processing plant work mean that poultry processors will compensate or otherwise reward workers who possess those attributes more highly than employers in other industries. From the perspective of the prospective poultry processing plant worker, poultry processing plant jobs are distinguishable from and likely more valuable than other lower-paid work that does not value and reward such attributes. In other words, other jobs are not reasonable substitutes for poultry processing plant jobs.

65. Common skills of poultry processing plant workers: Poultry processing plant workers develop special skills on the job. Workers learn these skills through the repetitive and, at times, difficult or dangerous tasks they perform on the poultry processing line. Poultry processing plant workers learn how to handle and slaughter live birds, wield knives and blades, section poultry carcasses, clean meat in a manner

consistent with health and safety standards, manage other workers performing these tasks, examine and repair the necessary machinery, maintain health and safety standards, and, crucially, perform these tasks efficiently so as not to slow down the plant line. Workers in management or other less physically demanding jobs also build industry-specific skills, including expertise in effective plant management and retention of employees. Just as with the common attributes of poultry processing plant workers who take plant jobs, the common skills of workers who stay and learn plant jobs help to define the relevant labor market. Not all potential workers can develop these important skills, and many fail out of poultry processing plant jobs within weeks. A worker with the skills to succeed on the line is most valuable to other poultry processing plants—and thus will receive the most compensation from poultry processors. Thus, from the workers' perspective, poultry processing plants are not reasonable substitutes for other employers.

b. Competition for Poultry Processing Plant Workers

66. The Processor Conspirators, which compete to hire and retain poultry processing plant workers, control more than 90 percent of poultry processing plant jobs nationwide. In some local areas, they control more than 80 percent of these jobs.

67. These poultry processors use similar facilities, materials, tools, methods, and vertically-integrated processes to produce processed poultry and downstream products in which they compete for sales to similar sets of customers. They also compete with each other for processing plant workers.

68. Poultry processors recruit workers in many different ways. They advertise for workers, use recruitment agencies, and rely on word of mouth or personal connections, sometimes offering referral bonuses, to attract friends or family of existing workers to come to their plants. The processors recruit workers in their plants' local areas but also more broadly. For example, poultry processors sometimes target workers in other states and even internationally.

c. Setting and Adjusting Plant Worker Compensation

69. Poultry processors compensate hourly and salaried plant workers through wages and benefits.

70. Hourly poultry processing plant workers' wages typically consist of a base pay rate set according to their role, with upward adjustments or bonuses offered based on factors including seniority, skill, productivity, and shift time. Salaried poultry processing plant workers' wages typically consist of annual salaries and may include annual or performance bonuses.

71. Processing plants also typically offer benefits to their hourly and salaried workers. These benefits can include personal leave, sick leave, health and medical insurance, other types of insurance, and retirement plans or pensions, among others.

72. Poultry processors also control working conditions within their plants, which can affect a poultry processing plant worker's job experience. These conditions include the quality of mechanical and safety equipment at the plant, temperature, and the speed at which the plant line moves, which determines the speed at which the workers have to perform their work.

73. Poultry processors typically make certain compensation-related decisions at the corporate level, which affect their workers nationwide. For example, poultry processors generally set overall labor compensation budgets, some plant worker wages, and some plant worker benefits in a centralized manner and at the national level. To illustrate, an executive at a poultry processor who manages compensation for the entire company may determine the health benefits for all of the line workers at all of the company's plants.

74. Poultry processors also typically adjust some wages and benefits at the corporate level, but for a regional or local area, on the basis of local factors. For example, an executive managing compensation for an entire poultry processing company may

consider a particular plant's needs and the pay at other nearby plants when deciding the base rate per hour for shoulder cutters on the plant line. As a result, shoulder cutters across all of the processor's plants may receive different base rates.

B. Defendants' Conspiracy to Collaborate on Compensation Decisions, Share Compensation Information, and Use Consultants to Facilitate Their Conspiracy

75. The Processor Conspirators, facilitated by the Consultant Defendants and Consultant Co-Conspirator 1, collaborated on compensation decisions, including by exchanging competitively sensitive information about plant worker compensation. The exchange of such compensation information, much of it current or future, disaggregated, or identifiable in nature, allowed the poultry processors to discuss the wages and benefits they paid their poultry processing plant workers. This section of the Complaint first describes the nature of their conspiracy in broad terms and then details some specific examples of the conspirators' collaboration and exchanges of information.

76. The Processor Conspirators collaborated with and sought assistance from each other when making decisions about wages and benefits for their poultry processing plant workers. These decisions should have been made independently. As a result, rather than competing for workers through better wages or benefits, the Processor Conspirators helped each other make compensation decisions.

77. The compensation information that poultry processors exchanged included information for both hourly and salaried plant jobs. Through the exchanges, a poultry processor could learn its competitors' base wage rates for a host of different poultry processing plant jobs, from live hangers to shoulder cutters to plant mechanics.

78. Through emails, surveys, data compilations, and meetings, the Processor Conspirators assembled a "map" of poultry processing plant worker compensation across the country. This "map" was broad enough to show nationwide budgets and granular enough to show compensation at individual poultry processing plants. The exchanges

allowed the poultry processors to learn not only the current state of compensation in their industry but also, in some cases, plans for the next year's compensation. The poultry processors exchanged information about nationwide, regional, and local wages and benefits.

79. As one example, in December 2009, Processor Co-Conspirator 18's Director of HR emailed Processor Co-Conspirator 14's Compensation Manager seeking a chart of information about Processor Co-Conspirator 14's current start rates and base rates for certain workers at specific Processor Co-Conspirator 14 plants in Maryland, Delaware, Virginia, North Carolina, South Carolina, Tennessee, Kentucky, and Alabama. Processor Co-Conspirator 18's Director of HR also asked Processor Co-Conspirator 14's Compensation Manager, "if you have negotiated, scheduled increases please list, or if it is a non-union facility and they have an annual increase just tell me that and what month." In the Processor Co-Conspirator 18 employee's own words, the purpose of this request, and the survey Processor Co-Conspirator 18 was building at the time (the Chicken Industry Wage Index, discussed below), was "to use the data to set wage rates and use when negotiating with the Union. . . . I am interested in sharing this information with you. . . . *I am hoping we can develop a collaborative working relationship.* I appreciate you taking the time to speak to me today and supplying this information to me" (emphasis added). Processor Co-Conspirator 14 responded, "See completed information below," filling out the chart as its competitor and collaborator Processor Co-Conspirator 18 requested.

80. The conspiracy reduced incentives for the Processor Conspirators to bid up salaries to attract experienced workers or retain workers that might have left for other processing plants. The detailed knowledge of their competitors' current and future compensation gave each Processor Conspirator a path to paying its own poultry processing plant workers less than it would have absent the on-demand access they

possessed to current and future, disaggregated, and identifiable information about its competitors.

81. The Processor Conspirators took pains to keep their collaboration secret, and they controlled which processors could participate in their information exchanges.

82. The conspiracy brought together rival poultry processors that competed with each other for workers. In a functioning labor market, the Processor Conspirators would have *avoided* sharing such confidential compensation information. Thus, their agreement distorted the mechanism of competition between poultry processors for poultry processing plant workers. This competitive distortion resulted in compensation that was not determined competitively but rather was suppressed—less than what workers would have been paid but for the anticompetitive conduct.

83. Unlike the Processor Conspirators, many of which are large, sophisticated corporate entities, the poultry processing plant workers lacked access to a comparable “map” of poultry processing plant compensation. To understand the wages they could earn, whether at plants in their local region or far across the country, workers had to rely on word-of-mouth or their own time- and labor-intensive research. These workers suffered from deep information asymmetries as a result of the Processor Conspirators’ and Consultant Defendants’ anticompetitive conduct.

1. WMS Poultry Industry Survey Group

84. From at least 2000 to 2020, a group of poultry processors, including all Processor Conspirators, agreed to participate in an exchange of compensation information facilitated by Defendant WMS (the “WMS Survey Group”).

85. Through the WMS Survey Group, all of the Processor Conspirators exchanged current and future, disaggregated, and identifiable information about their plant workers’ wages and benefits. They also met annually in person to discuss these

exchanges. At these meetings, the Processor Defendants shared additional compensation information and collaborated on compensation decisions.

a. WMS Survey Group History, Rules, and Control by Processor Conspirators

86. Before 2000 and potentially as early as the 1980s, many of the Processor Conspirators, including Defendants Cargill, Sanderson, and Wayne, as well as Processor Co-Conspirators 6, 7, 14, 15, 17, and 18, participated in a group similar to the WMS Survey Group, but in which they directly exchanged compensation data with each other without the participation of WMS.

87. Beginning in 2000, the Processor Conspirators hired WMS and Defendant Jonathan Meng to provide a veneer of legitimacy for their collaboration and information exchange.

88. Meng believed that in hiring him and WMS, the Processor Conspirators were not trying to comply with the antitrust laws, but instead were trying “to establish the *appearance* of compliance with the Safe Harbor guidelines and antitrust law and obtain compensation data in a matter that sometimes *seemed* permissible.” By “Safe Harbor,” Meng was referring to guidance antitrust authorities have provided about how companies can reduce the likelihood that an exchange of information between competitors is unlawful. Although this guidance does not immunize any competitor information exchange from the antitrust laws (and has never done so), the Defendants and Co-Conspirators were sharing the type of information that the guidance specifically identified as likely to violate the antitrust laws.

89. While Defendant WMS began administering the survey in 2000—issuing the survey forms, receiving responses from the participants, distributing the results, and presenting them in person every year at their annual meeting—the Processor Conspirators together controlled the categories of compensation information included in the survey and the requirements for group membership. The processors made these decisions

through the WMS Survey Group's Steering Committee, on which Processor Co-Conspirators 6, 7, 14, 15, and 18 sat on a rotating basis from 2000 through 2020. The Steering Committee, along with the other WMS Survey Group participants, including Defendants Cargill, Sanderson, and Wayne and Processor Co-Conspirators 3, 8, 17, voted on potential new members in the WMS Survey Group. Thus, while WMS facilitated this scheme, including by collecting the information and tabulating the results, the Processor Conspirators themselves decided to collaborate on compensation decisions and exchange anticompetitive compensation information.

90. Processor Co-Conspirator 5's successful attempt to join the WMS Survey Group in October 2014 highlights the group's membership standards and what motivated poultry processors from across the country to join. Processor Co-Conspirator 5's representative emailed Defendant WMS and Processor Co-Conspirators 6, 7, and 18, explaining, "I was recently told of a committee/group that had gotten together in the past to talk about compensation in the poultry industry. I know we deal with a slightly different bird here at [Processor Co-Conspirator 5] than [Processor Co-Conspirator 6] and probably the majority in your group, but I would be interested in participating in that group if you think it would be appropriate. . . . If you're open to Midwestern Turkey company participating in this . . . I'd love to be considered." An executive from Processor Co-Conspirator 6 responded, volunteering to send the request to the Steering Committee and noting that participants in the survey "need[] to meet certain requirements that indicate you fit into the data study (ex. Number of plants, etc...)." After some discussion among Defendant WMS and Processor Co-Conspirators 6, 7, 14, and 18, an executive from Processor Co-Conspirator 7 noted, "Traditionally, if they meet the size criteria and there are no 'naysayers' from the existing party, they get the welcome handshake, no?"

91. In contrast, Meng detailed what occurred when, in 2014, some of the WMS participants considered including "red meat processing complexes" in the survey:

the “processors ultimately rejected that possibility.” Meng stated in a sworn declaration to this Court, “The reason why those processors declined to include the red meat processors in the [WMS Survey Group] is because the poultry processing labor market is distinct from the red meat processing labor market. Several of those processors told me this, and it is also evident to me from my own review of the markets.”⁵

92. Members of the WMS Survey Group were required to attend each annual in-person meeting as a condition of participating in the compensation collaboration and information-exchange group. If a poultry processor did not attend regularly, it could be kicked out. As an executive for Processor Co-Conspirator 7 explained, “Normally, any company that doesn’t participate in the survey *and* attend for 2 consecutive years is removed from participation.” This policy demonstrates that the opportunity to collaborate in person was an important feature of the WMS Survey Group.

b. Compensation Data Exchanged Through WMS Survey Group

93. Attendees at the annual WMS Survey Group in-person meeting brought their current and future, disaggregated, and identifiable compensation data with them. The attendees then discussed that information confidentially. As one 2009 communication from Processor Co-Conspirator 6 to Defendants Cargill, Sanderson, Wayne, Processor Co-Conspirators 1, 4, 7, 8, 15, and 18, and Former Processor Co-Conspirator 2 put it: “Hope all are planning to be there for the meeting. Just a reminder to bring you Data manual in case others have questions for you concerning your data. Please be prepared to discuss survey issues, questions, and details with WMS. We will also be sharing information in a round table discussion. *These discussions are expected to be kept confidential*” (emphasis added). As Meng explained, “In earlier years, the attendees typically brought this data to the roundtable sessions in hard-copy form using large

⁵ Meng filed his declaration before this Court on February 4, 2022 as ECF No. 580-4 in *Jien v. Perdue Farms, Inc.*, 19-cv-2521 (D. Md.).

binders. In later years, the attendees brought their laptop computers, which contained all the compensation data in electronic form.”

94. Through the WMS Survey Group, the Processor Defendants, facilitated by Defendant WMS, exchanged current and future, disaggregated, and identifiable data about their poultry processing plant worker compensation on an annual basis. The Processor Defendants gave each other accurate, detailed, and confidential information: as Processor Co-Conspirator 8 put it, “The information obtained through participation can’t be overstated.”

95. Through a single annual WMS survey or potentially a single in-person meeting, a processor could understand trends in poultry processing plant worker compensation nationwide. This information was especially important to processors competing for workers willing to move, even internationally, for plant work. But the Processor Conspirators also could compare notes on plant compensation in a particular local area to understand, for example, how one processor’s base wage rate for line workers in a particular county compared to a nearby competitor’s.

96. As detailed below, over many years, the poultry processors in the WMS Survey Group used the surveys and in-person meetings to compare planned future raises or changes in plant worker compensation. WMS’s Meng explained that “members of the [WMS Survey Group] said they wanted to know how much and when their competitors were planning to increase salaries and salary ranges.” Comparing processors’ compensation projections from the past year against their actual compensation levels in the current year revealed whether the Processor Conspirators had held to the prior year’s projections, making any deviations from prior exchanged information easily detectable. This ability to check the information shared across time encouraged the participants to submit accurate information, because deviations between projected and actual compensation levels would be apparent. The Processor Conspirators’ sharing of future

compensation plans could also have disincentivized them from making real-time compensation changes to better compete against each other, maintaining wages at their projected levels and suppressing wages that might otherwise have risen through natural, dynamic competition.

97. From 2005 through 2017, the WMS survey showed future data, such as the median and average future salary merit increase for each company involved in the survey. From 2006 through 2019, the surveys included an additional column that allowed for easy comparison between the actual current year's percentage changes and the changes that had been projected in the previous year's survey. This enabled the survey participants to monitor whether their competitors adhered to the previous year's forecasts.

98. The Processor Conspirators discussed other compensation information during their face-to-face meetings. A 2015 email from Processor Co-Conspirator 18 to fellow WMS Steering Committee members and Processor Co-Conspirators 6, 7, and 14, stated, "As you know the survey results do not provide hourly production projected budgets"—i.e., future compensation information for hourly production line workers—"and this is typically a discussion during the roundtable sessions." Even more explicit is an internal Processor Co-Conspirator 18 email from 2005, in which one executive explained to another, "The survey results will be shared at the meeting and we can get the 10th percentile and the other company's avg minimum of the range. I believe there are other poultry companies paying below our lowest salary. Although it won't be published in the survey results [the Processor Co-Conspirator 18 meeting participant] can also informally ask what minimum starting rates are." Again, this email exchange demonstrates that the opportunity to collaborate with their competitors in person was a key feature of the WMS Survey Group.

99. Meng's presentations at the WMS in-person meetings also featured current compensation information. For example, he explained in his sworn declaration,

“Specifically, those PowerPoint presentations focused on how the compensation data reported in the current year for both salaried and hourly-paid workers compared to the prior year or two years.”

100. Further, Meng stated that at the in-person WMS meetings, “the private roundtable sessions that excluded me involved discussions between members of the [Processor Conspirators] regarding their compensation practices. Those discussions addressed, among other issues, the results of the [WMS surveys], the compensation data that particular individual processors had reported to the Survey, and plans for future compensation rates for salaried and hourly-paid workers.”

101. The Group’s 2009 “Operating Standards” provided that each participating poultry processor must “[a]gree and ensure that shared survey data or other information from discussions will be used and treated in a ‘confidential’ manner and definitely should not be shared with companies not participating in the survey. Failure to meet these requirements will result in immediate removal from the survey group.” This condition for joining the WMS Survey Group shows that the participants considered the information exchanged to be nonpublic and restricted to survey participants.

102. Meng willingly participated in the processors’ violation of antitrust law. To help create a false veneer of compliance with the antitrust laws, Meng would occasionally make statements that WMS’s product “complied with legal requirements.” In August 2012, when the Steering Committee decided to make a change to the survey to distribute disaggregated and identifiable data regarding hourly workers, Meng raised a concern that this would not comply with antitrust agency guidance on information exchanges. Rather than forego exchanging this information, the Processor Conspirators on the Steering Committee asked that Meng not mention his concern to the other processors: “what about just letting them respond as to any concerns as opposed to calling it out?”

c. WMS Survey Group Exchanges by Year, Defendant, and Type of Information Exchanged in Surveys and In-Person Meetings

103. The following chart lists the Processor Defendants that participated in the WMS Survey Group by year.

PROCESSOR DEFENDANTS' WMS SURVEY GROUP PARTICIPATION BY YEAR	
2000 – 2011	Cargill, Sanderson, and Wayne
2012 – 2019	Cargill and Wayne

104. In the remainder of this section, allegations about events or conduct in each year of the WMS Survey Group apply to all of the Processor Defendants participating in the WMS Survey Group for that year, except where otherwise noted.

105. From at least 2000 through 2019, the members of the WMS Survey Group submitted their confidential compensation data to the WMS-run survey and received survey results containing their competitors' confidential compensation data. The types of data gathered and shared changed during the WMS Survey Group's over-20-year existence. In the following years, the WMS survey solicited, and the WMS survey results included:

a. 2000: Confidential information about wages, salaries, benefits, and bonuses related to “dozens of positions at poultry complexes,” including plants, hatcheries, and feed mills;

b. 2001 – 2004: Current and future, disaggregated, and identifiable salary and benefits information, as well as current, disaggregated, and identifiable hourly wage information, including “what each member of the [WMS Survey Group] paid, on average, in hourly wages to poultry processing workers at each of their processing plants.” The information was identifiable because the WMS survey included what was “in effect, a key for identifying the identity of each poultry processor”;

c. 2005 – 2012: Future salary information, including the dates and ranges of planned raises in salary by position, confidential information about hourly wages, and current and disaggregated benefits information;

d. 2013 – 2016: Future salary information, including the dates and ranges of planned raises in salary by position; current, disaggregated, and identifiable hourly wage information, which enabled participants to determine specific competitors' current hourly compensation by plant; and current and disaggregated benefits information;

e. 2017: Future salary information, including the dates and ranges of planned raises in salary by position, confidential information about hourly wages, and current and disaggregated benefits information; and

f. 2018 – 2019: Confidential compensation information.

106. As discussed above, from 2001 through 2019, the members of the WMS Survey Group met in person annually to discuss poultry processing plant compensation. All participants were instructed by the Steering Committee to bring their individual compensation data with them to these meetings. From 2001 through 2017, the members of the WMS Survey Group held roundtable discussions about compensation practices from which they excluded any third parties, including Meng. In 2018 and 2019, Meng attended all sessions of the in-person meeting.

107. At these in-person WMS Survey Group meetings, the members of the WMS Survey Group collaborated on, assisted each other with, and exchanged current and future, disaggregated, and identifiable information about compensation for poultry processing workers, as described below:

a. 2007: An “agenda and group discussion topics” list for the 2007 WMS Survey Group meeting states “Are Smoking Cessation Programs included in your

Health benefits? If not, do you have plans to implement? If currently included, please share your schedule of benefits.”

b. 2008: Later correspondence between WMS Survey Group Members states that at the 2008 WMS Survey Group meeting, “we discussed companies that are now charging higher insurance premiums for smokers.”

c. 2011: In 2012, Meng emailed the WMS Survey Group members about notes they had taken at the prior year’s in-person meeting, warning them that the notes disclosed details that put the processors at risk of having violated the antitrust laws. Meng wrote to the processors, “you reference certain positions not included in the survey where ‘we will all agree to contact each other for general position.’ That comment and action goes against the Safe Harbor Guidelines.” Thus, it appears that during the 2011 meeting, the Defendants present directly shared information that violated the antitrust laws.

d. 2015: At the 2015 WMS Survey Group meeting, the participants discussed “whether to distribute disaggregated, raw, plant-level data concerning hourly-paid workers” through the WMS survey and that “all members of the [WMS Survey Group] in attendance at the Meeting agreed to the continued distribution of such data.” Notes taken at the 2015 WMS Survey Group roundtable meeting by Processor Co-Conspirator 18 record what each participant shared with the group in columns next to each processor’s name. These notes suggest the processors openly and directly shared with each other a wide range of detailed, non-anonymous, and current- or future compensation information, with a special focus on their rates of overtime pay (i.e., pay for the 6th and 7th days of the week):⁶

⁶ As described above, all spelling and grammatical errors in documents quoted in this Complaint are *sic*.

- i. Processor Co-Conspirator 3's column notes, "6th and 7th day pay \$150 flat rate"; "Compress scales over 1 yr rate to start rate. Startign in Feb 2015";
- ii. Processor Co-Conspirator 6's column notes, "Added seniority pay instead of doing an hourly increase. . . . Rolls w/ vacation, up to 6% increase. It is a seniority premium";
- iii. Processor Co-Conspirator 8's column notes, "Staffing plants is a big issue down 290 positions at springdale locations. \$500 signing bonus \$300 first 30 days \$200 30 days";
- iv. Processor Co-Conspirator 14's column notes, "NO 6th and 7th incentive";
- v. Processor Co-Conspirator 15's column notes, "HOURLY bonus program 17K employees";
- vi. Processor Co-Conspirator 17's column notes, "6th and 7th day pay for weekly paid frequency \$150 or comp day";
- vii. Defendant Wayne's column notes, "\$200 6th / \$300 7th; some facilities if you work in 6 hours you get the full day based base pay";
- viii. Processor Co-Conspirator 2's column notes, "\$1.00 Attendance bonus up from \$0.25 Shoulder can earn up to \$150 week. . . Benefits – Taking a harder look at their package"
- ix. Processor Co-Conspirator 9's column—in its sole year of participation in the WMS Survey Group—notes, "6th / 7th day up to 6 hours, get ½ for 4 hours half day";
- x. The column for Processor Co-Conspirator 18b (now owned by Processor Co-Conspirator 18) notes, "200 6th 275 7th day."

xi. Processor Co-Conspirator 10's column notes, "\$1.00 Attendance bonus up from \$0.25 / Negotiated contract \$55. 30. .30 3 Yr. / Supervisor offering 5000 – 8000";

xii. The column for Former Processor Co-Conspirator 3, now owned by Processor Co-Conspirator 16, notes, "Line Team Members want more money; based on survey we are in the middle" and "No Weekend Pay. But will be looking"; and

xiii. Processor Co-Conspirator 13's column notes, "Currently does not have Weekend Pay for Supervisors."

e. 2017: The 2017 WMS Survey Group meeting marked a turning point for the WMS Survey Group. That year, after the filing of a private antitrust class-action suit in the Northern District of Illinois alleging price-fixing by many participants in the downstream sale of chicken products, the processors and Meng became more concerned about antitrust risk. At least one executive from Processor Co-Conspirator 7—a Steering Committee member—traveled all the way to the 2017 meeting only to learn that his employer's legal counsel had directed him not to attend the sessions. At the 2017 meeting, the Defendants and Processor Conspirators in attendance "all agreed," in the words of WMS's Jonathan Meng, "that moving forward all questions about future increases would be removed from the survey."

2. Direct Processor-to-Processor Collaboration and Information Exchanges

108. In addition to collaborating on setting compensation for plant workers through the WMS Survey Group, including through in-person meetings that involved direct exchanges of identifiable compensation information, the Processor Conspirators collaborated on and directly exchanged current and future, disaggregated, and identifiable

information about plant workers' wages and benefits. These interactions occurred ad hoc and involved information about both local and nationwide compensation decisions.

109. That the conspirators repeatedly contacted each other to seek non-public competitive information shows the mutual understanding among these Processor Conspirators that they would collaborate with and assist each other on compensation decisions.

110. The relationships poultry processors established with their labor market competitors through groups like the WMS Survey Group created the opportunity to engage in ad hoc direct exchanges of compensation information. By exchanging large amounts of current and future, disaggregated, and identifiable data, the processors collaborated to accumulate a set of industry compensation information they could use to set their workers' wages and benefits at a nationwide level (for example, to set budgets on plant worker spending across the country) or locally (for example, to determine pay for shoulder cutters in a specific plant).

a. Chicken Industry Wage Index ("CHIWI") Exchange

111. The collaboration and direct exchanges among processors included a survey that was designed and run by Processor Co-Conspirator 18, the Chicken Industry Wage Index or "CHIWI." Through this survey, Defendant Wayne, along with Co-Conspirators 6, 7, 8, 14, 15, 17 and others, exchanged current and future, disaggregated, and identifiable compensation data from 2010 to 2013. The survey results were so disaggregated that they showed wages for each participant's specific processing plants. Processor Co-Conspirator 18 disclosed wages by region of the country, as defined by Consultant Co-Conspirator 1, making it easy for the processors to compare the CHIWI results with the current, disaggregated, and identifiable Consultant Co-Conspirator 1 compensation information discussed below.

112. A Processor Co-Conspirator 18 employee described CHIWI to others inside the company in 2013, noting that it was a “survey with competing poultry companies. With this information, we feel that we are in a better position to strategically evaluate wages on a location by location level.”

113. In 2013, Processor Co-Conspirator 18 transferred the running of CHIWI, which it continued funding, to Defendant WMS. In a February 2013 letter from WMS to Processor Co-Conspirator 18 describing its planned administration of CHIWI, Meng noted “WMS will develop the survey document for your approval based upon the templates provided earlier by [Processor Co-Conspirator 18].”

114. WMS administered the “Hourly Survey” (the renamed CHIWI) to the WMS Survey Group participants from 2013 to 2015, with all participants in the WMS Survey Group for those years submitting and receiving CHIWI-format compensation data. In 2016, WMS distributed a substantially similar survey of plant-level data for hourly workers along with its 2016 annual survey to Defendants Cargill and Wayne and Processor Co-Conspirators 1, 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, 15, 17, and 18.

115. During Defendant WMS’s administration of the Hourly Survey, WMS assisted Processor Co-Conspirator 18 in identifying some of the Processor Conspirators’ exchanged compensation information presented in WMS surveys. In October 2014, a Processor Co-Conspirator 18 employee emailed WMS’s Jonathan Meng, asking “We need to know the number of [Processor Co-Conspirator 15] locations that participated in our last Hrly Prod Maint survey. Can you provide this as soon as you get a chance?” Another WMS employee responded to this email that same day, writing “29 locations were reported by [Processor Co-Conspirator 15].” Telling Processor Co-Conspirator 18 the number of locations of another processor’s plants reported in a survey would assist Processor Co-Conspirator 18 in identifying the disaggregated survey results, which were broken out by plant. If Processor Co-Conspirator 18 knew how many plants a given

processor had reported, Processor Co-Conspirator 18 could match the number of plants reported for a specific (anonymized) competing processor to crack the code and identify the processor.

116. Processor Co-Conspirator 18 and Defendants WMS and Meng were cognizant of, and worried about, the antitrust risk posed by CHIWI. After WMS took over the administration of CHIWI, a Processor Co-Conspirator 18 employee requested that Meng remove the note “Sponsored by: [Processor Co-Conspirator 18]” in the circulated report and replace it with the title “WMS Poultry Hourly Wage Survey.” Meng did not comply with this request, stating that “I did not want the Poultry Industry Survey Group to conclude that WMS approved of the format of the [Processor Co-Conspirator 18] sponsored survey.” On another occasion, Meng explained to Processor Co-Conspirator 18 executives that CHIWI included clear risk factors for a potentially anticompetitive exchange of information, noting that participating poultry processing firms were likely to be able to identify which processor operated which plant based on the details about the plants disclosed in the survey. Despite his warning, the Processor Co-Conspirator 18 executives requested that WMS proceed, and WMS willingly complied.

b. U.S. Poultry & Egg Association Member Processors’ Exchanges

117. Some Processor Conspirators used their involvement with the U.S. Poultry & Egg Association, a nonprofit trade association for the poultry industry, to collaborate with other poultry processors on compensation decisions.

118. In November 2016, Processor Co-Conspirator 12’s Director of Human Resources emailed, among others, Defendants Sanderson and Wayne and co-conspirators including Processor Co-Conspirators 1, 3, 5, 6, 8, 10, 11, 14, and 18, noting “I understand Paul is out of the country”—likely a reference to the Director of the Association’s HR and Safety Program— “so I hope you do not mind me reaching out to you directly. With

the news on the new OT rule injunction, I am curious on how you plan to proceed? Wait and see or stay the course for any 12/1/16 plans you have already made?” This question was a reference to a court order staying a federal rule mandating a change to overtime pay. Defendant Sanderson’s Human Resource Manager replied, copying all recipients, “We are in the process of implementing the new wages and I don’t see that we will stop or change it,” thus sharing Sanderson’s future wage plans with its competitors directly.

119. In June 2017, the Director of the Association’s HR and Safety Program emailed Defendants Cargill, Sanderson, and Wayne; Processor Co-Conspirators 3, 6, 7, 8, 9, 10, 12, 14, 15, 17, and 18; Consultant Co-Conspirator 1; as well as others, the results of a survey “on pay ranges of Live Hang employees versus General Production employees,” noting that “sixteen sites” participated. The survey questions sought the “average per hour rate that you pay,” meaning the current pay rate, of both Live Hang employees and General Production employees.

120. The U.S. Poultry & Egg Association also conducted in-person meetings between the processor competitors, similar to the WMS Survey Group. In fact, enough participants attended both in-person meetings that in September 2012, Processor Co-Conspirator 18 and Processor Co-Conspirator 7 discussed scheduling the WMS Survey Group meeting at the same location and around the same dates as the U.S. Poultry & Egg Association in-person meeting due to “the people that attend both.” In December 2016, Defendant Sanderson attended the U.S. Poultry & Egg Association meeting, four years after Sanderson’s departure from the WMS Survey Group.

c. Processor Conspirators’ Ad Hoc Direct Exchanges

121. The Processor Defendants also collaborated to exchange and discuss confidential compensation information directly in an ad hoc fashion. These direct exchanges were often between two or three competitors. Some processor-to-processor communications were between senior employees in processors’ corporate offices and

concerned nationwide compensation. Others were between processor employees at the local plant level, such as exchanges between competing plant managers that were then reported to processor executives at the national level.

122. In January 2009, an employee of Processor Co-Conspirator 14 emailed Defendants Cargill, Sanderson, and Wayne and Processor Co-Conspirators 6, 7, 8, 15, and 18, asking, “I am curious to find out if anyone has (or is in discussions) about postponing plant or merit increases.” In addition, in the same email, she noted, “I know there has been some previous dialogue about plant and merit increases.”

123. In September 2013, an employee of Defendant Cargill sent Processor Co-Conspirator 18 her company’s internal medical leave policy, which included a detailed description of benefits.

124. In January 2015, an employee of co-conspirator Processor Co-Conspirator 8 emailed his supervisors to tell them he had spoken with the HR Manager of a particular Processor Co-Conspirator 18 plant, who told him that “[t]he \$13.90 starting pay is for Breast Debone at their Green Forrest facility. The \$13.90 is available once they qualify and then they are eligible for incentive pay on top of that. So in fact an experienced Shoulder Cutter could go there and get a \$13.90 starting pay rate. He said that the normal starting rate was \$10.50 per hour with \$0.40 extra of 2nd shift and \$0.45 extra for 3rd shift.” This Processor Co-Conspirator 8 employee then mentioned he would contact HR managers at another Processor Co-Conspirator 18 plant, as well as a plant owned by Processor Co-Conspirator 17.

3. Exchange of Compensation Information Through Consultant Co-Conspirator 1

125. From at least 2010 to the present, the Processor Defendants also used another data consultant, Consultant Co-Conspirator 1, to collaborate with each other on compensation decisions through the exchange of current, disaggregated, and identifiable

information about their poultry processing plant workers' wages and benefits, artificially and anticompetitively suppressing this compensation.

126. Consultant Co-Conspirator 1 gathers data from companies and distributes it to paying customers. Consultant Co-Conspirator 1 does not sell this data to the public; its reports are only available to its subscribers.

127. Publicly available information dating from both 2011 and 2020 shows Consultant Co-Conspirator 1 gathered data from over 95 percent of U.S. poultry processors, including all of the Processor Conspirators. Consultant Co-Conspirator 1 also admitted in *Jien* (19-cv-2521) that its subscribers have included all of the Processor Conspirators. Thus, it is likely that all Processor Defendants exchanged compensation information through Consultant Co-Conspirator 1 from at least 2010 to present.

128. The data Consultant Co-Conspirator 1 gathers and sells is current, disaggregated, and identifiable. Consultant Co-Conspirator 1 claims that it can minimize those risks to make this data "safer" to distribute by anonymizing the companies and processing plants for which it reports specific wages and salaries per job role. Although the plants reported in Consultant Co-Conspirator 1's data reports are not identified by name, they are grouped by region, and the list of all participants in the region is provided. Accordingly, the number of employees and other data provided per plant makes this data identifiable to other processors.

129. Processors are thus likely able to use Consultant Co-Conspirator 1's data reports to identify the wage and salary rates, as well as benefits, that each of their competitors is currently setting for each of its plants.

130. In addition to permitting competing poultry processors to collaborate on their wages and benefits at the individual plant level, Consultant Co-Conspirator 1's data reports also provide a means for processors to monitor whether their collaborators are

following through on the compensation decisions they reported through the WMS Survey Group and the ad hoc compensation exchanges.

4. Processors' Collaboration and Assistance on Compensation

131. In a patchwork of different combinations, through different methods, and with respect to different types of compensation information, the Processor Defendants built a pervasive conspiracy across the poultry processing industry to collaborate on, and not merely exchange, poultry processing plant worker wages and benefits information.

132. As described above, many of the Processor Conspirators, including Defendants Cargill, Sanderson, and Wayne, as well as Processor Co-Conspirators 6, 7, 14, 15, 17, and 18, began exchanging compensation information directly, without involvement from WMS, as long ago as the 1980s. One employee of Processor Co-Conspirator 6 told WMS's Jonathan Meng that "executives from each of those poultry processors would meet in a private room and bring enough copies of their salary and wage data to distribute to all the other attendees," and "the attendees would then exchange and discuss their compensation schedules." According to one participant, these pre-2000 exchanges included an understanding between participants that they would not use the information they exchanged about each other's salaried compensation to attempt to hire away each other's salaried employees. This early conspiracy to collaborate helped foster the mutual understanding in which processors agreed to collaborate on, rather than compete over, poultry processing plant worker compensation.

133. In December 2008, for example, an executive at Processor Co-Conspirator 4 emailed Defendants Cargill, Sanderson, and Wayne and Processor Co-Conspirators 6, 7, 8, and 14, seeking details of each competitor's dental plan benefits, which her company was "currently reviewing." The Processor Co-Conspirator 4 executive made clear that her company would use the information provided by its competitors to shape its own compensation decisions, explaining that "[y]our responses to the questions below

would greatly help us ensure we stay competitive within the industry.” The questions she included related to eligibility for coverage, services included in the plan, “annual deductible,” and “annual max per person.”

134. In September 2009, an executive at Defendant Wayne emailed Defendants Cargill, and Sanderson and Processor Co-Conspirators 6, 7, 8, 14, 15, and 18 informing them that “[i]t’s that time of year already” because Wayne was “working on 2010 budget increase recommendations.” The executive then asked Wayne’s competitors to send future, disaggregated, directly-exchanged (and thus identifiable) compensation information: “What is your companies projected salary budget increase recommendation for 2010?” Later in this email chain to the same group, the Wayne executive noted that her colleague’s “sanity is depending on your response. Seriously -any info you can give us will be helpful, we appreciate your help.” Processor Co-Conspirator 14 and Processor Co-Conspirator 8 both responded to this email chain with their competitors and directly disclosed a projected (future) recommendation to increase their budgets for salaries by three percent.

135. In July 2015, an executive for Processor Co-Conspirator 14 emailed her peers at Defendant Sanderson and Processor Co-Conspirator 18, explaining that Processor Co-Conspirator 14 was “in the midst of completely revamping our Plant Management Trainee program.” Her email continued, “and I was wondering if you would be willing to share with me . . . what your starting rate is for these kids hired right out of college?” The Processor Co-Conspirator 14 employee sought current, disaggregated, and identifiable wage information from her competitors for the explicit purpose of assisting Processor Co-Conspirator 14 to make its own wage decisions for this cohort. Her peer at Sanderson responded the very next day to both Processor Co-Conspirator 14 and Processor Co-Conspirator 18, disclosing, among other information, that Sanderson’s Beginning Trainee Program paid “from 36,000 to 38,000, no signing bonuses” and that

Sanderson's Advance Trainee program paid "from \$48,000 to \$87,000, no signing bonuses."

136. In February 2016, the Director of Compensation at Processor Co-Conspirator 4 emailed Defendants Cargill and Wayne, as well as Processor Co-Conspirators 3, 6, 7, 8, 14, 15, 17, and 18. She thanked a Wayne employee and noted, "that reminded me that I had a question for the group also. We are trying to determine what is reasonable for salaried employee to be compensated for working 6 and/or 7 days in a work week when the plant is running." The questions she asked included "Do you pay extra for these extra days worked for salaried (exempt) employees?" and "If so, how is that calculated?" The statement that Processor Co-Conspirator 4 was in the midst of "trying to determine" overtime pay decisions, and wanted to know what its competitors did in the same circumstances, likely made clear to the recipients that Processor Co-Conspirator 4 planned to use the information it gathered in its own decision-making. An employee from Processor Co-Conspirator 10 responded to all recipients, noting, "We pay 1/5 of the weekly salary for the sixth and seventh days if working due to production. This includes supervisors and managers below the plant manager level and all are paid the same. If the day off is compensated by a paid benefit, other than sick time, we pay the sixth and seventh days. Sanitation and maintenance only get paid for the seventh day worked."

137. In September 2016, an executive from Processor Co-Conspirator 7 sought future compensation information from Defendants Cargill and Wayne and Processor Co-Conspirators 3, 6, 8, 14, 15, 17, and 18 related to a new Fair Labor Standards Act salary threshold for exempt status, a federal requirement determining to which workers the processors would have to pay overtime wages based on salary. The Processor Co-Conspirator 7 executive asked his competitors to fill out a directly-exchanged survey form to indicate how they would change compensation plans for all employees and, more

specifically, for first-line supervisor roles. Within a week, Defendant Cargill and Processor Co-Conspirators 6, 8, 15, and 17 responded by sharing their future compensation plans, which the Processor Co-Conspirator 7 executive passed on (labeled by processor) to the entire group, reflecting, “If more respond, I’ll republish, but the target grouping pattern already appears pretty tight.” The chart attached to the executive’s email showed that eight of the ten processors selected “most employees are receiving base salary increases to bring them to the threshold salary,” thus ending the processors’ obligation to provide these workers with overtime pay, and “a smaller number will not receive a base increase but will receive overtime.” Similarly, eight of the ten respondents selected, as to the first-line supervisors, “are either above the salary threshold or will receive a base salary increase to the threshold.”

138. The Processor Defendants’ collaboration also involved forms of compensation other than wages. In January 2010, an executive for Processor Co-Conspirator 18 wrote to Defendants Cargill, Sanderson, Wayne, and WMS and Processor Co-Conspirators 6, 7, 8, 15, and 17 for help because Processor Co-Conspirator 18 was “considering a change to convert” some of its plant worker jobs to a category that would provide them with fewer benefits: “Production workers on the line do not get quite the same as our technical support jobs, nurses and clerical. The difference is 5 days daily sick pay, better vacation schedule, higher short-term disability pay and the ability to use our flexible (pre-tax) benefits saving plan.” Processor Co-Conspirator 18 noted that a “prompt response would be much appreciated” from its competitors about whether “any of you have a difference in benefits between” these two job categories, to assist it in making this decision. Processor Co-Conspirator 7 responded to Processor Co-Conspirator 18’s question, stating it did not.

139. A 2015 email exchange between Processor Co-Conspirators 8 and 18 provides detail on how the competitors may have viewed their relationships with each

other as collaborators. On October 6, 2015, Processor Co-Conspirator 18 received an email from a Processor Co-Conspirator 8 executive asking, “Would you mind sending me your current Health Insurance Rates? Also do you plan on raising them in 2016? Thanks you so much for your help.” Processor Co-Conspirator 18 then discussed this request internally, noting, “We don’t count on them [Processor Co-Conspirator 8] for much so we don’t owe them anything from our side.” This view of the request for future and directly exchanged compensation information as part of a quid pro quo calculation—that to get the helpful information, you have to give the helpful information—helps explain why the competing processors were so willing to share compensation information when their competitors asked for it.

140. In designing the WMS survey, the WMS Survey Group participants collaborated to ensure the exchanged data included the type of disaggregated compensation information that antitrust agencies warned against as a risk factor for identifying information exchanges not designed in accordance with the antitrust laws. For example, in 2012, the Steering Committee, which then included Processor Co-Conspirators 6, 7, 14, 15, and 18, decided to distribute disaggregated and identifiable data regarding hourly plant workers. WMS’s Jonathan Meng warned the Steering Committee that distributing this data would violate the guidance and proposed ways of presenting the data that would make it less identifiable. Processor Co-Conspirator 18, however, instructed Meng to let the WMS survey group know of the change to the survey design but not to “call out” Meng’s concerns. Meng followed Processor Co-Conspirator 18’s instructions and simply advised the Survey Group of the changes, stating that “The Steering Committee has requested that the hourly wage information included in the report be expanded to include the raw data for each state. . . . The steering committee needs to know if you are in agreement with the proposed changes.” Meng noted that under this plan, which he asked each WMS Group Participant to agree to explicitly, he would

include disaggregated, identifiable wage data from Alabama, Arkansas, Georgia, Missouri, Mississippi, North Carolina, Tennessee, and Virginia. Later, Meng stated that “everyone is in agreement with the change except [Processor Co-Conspirator 4] and [Processor Co-Conspirator 13], who have not responded yet.”

141. The WMS Survey Group participants, competitors in the market for poultry processing plant labor, also collaborated to standardize the job categories for which they each reported compensation data, ensuring they could match each other’s compensation decisions. The Processor Defendants also may have worked, with assistance from Defendant WMS, to standardize job types and categories across their different enterprises. This made a comparison between each participant’s jobs easier, and thus made the information swapped about each job category’s compensation more accessible for use. With respect to salaried positions, the annual survey questionnaire was intended to permit participants to match all jobs to defined job categories while indicating when the matched job was, in the view of the participant, “larger” or “smaller” than the job as described in the questionnaire. Survey results reported the percentages of respondents indicating inexact job matches. In 2012, an employee for Processor Co-Conspirator 14 employee described in an email to a Processor Co-Conspirator 18 employee the prior year’s WMS Survey Group in-person meeting, at which “the discussion around the room was that some companies call this single incumbent job a Plant Safety Manager and some a Complex Safety Manager.” This standardization for purposes of collaboration, enabled by WMS, made it easier for the Processor Defendants to determine and monitor consensus among themselves for compensation, enabling their conspiracy, which suppressed compensation.

5. Processors Recognize Their Agreement Likely Violated the Antitrust Laws and Attempt to Cover It Up

142. The Defendants at times expressed concern that their agreement was unlawful. Sometimes, fear of discovery or other outside events prompted them to change

their views of the risk they were each engaged in. Nonetheless, they maintained secrecy throughout the conspiracy.

143. On February 14, 2012, Defendant Sanderson's HR Manager emailed Defendants Cargill and Wayne and Processor Co-Conspirators 7, 8, 15, and 17 along with Defendant WMS, notifying them that Sanderson would be ending its relationship with the WMS Survey Group. The HR Manager stated, "On the advice of legal counsel, our Executives have decided that we can no longer participate in this type of survey." If the Defendants had not been previously aware of the legal risk involved in the WMS Survey Group exchange, this email put them on notice.

144. Private class actions related to this conduct and other allegedly anticompetitive behavior in the poultry industry caused the members of the WMS Survey Group to change some of their behavior. As noted above, at their 2017 in-person meeting, the participating Processor Conspirators, in the words of WMS's Jonathan Meng, "all agreed that moving forward all questions about future increases would be removed from the survey. . . . It was also recommended by counsel for [Processor Co-Conspirator 7] to have an Antitrust Attorney present for the general group discussions (post survey results)."

145. As Processor Co-Conspirator 7 described in October 2017, the Processor Conspirators would thereafter treat Meng as an "Antitrust Guidon." In military terminology, a guidon is a flag flown at the head of a unit to signify that the commander is present. An executive at Processor Co-Conspirator 8 put it more bluntly, commenting that "One thing that has changed is that the group will now have an attorney present for the full meeting to make sure no collusion and that the Safe Harbor provisions are all met and followed." Meng acknowledged in January 2018 to an executive for Processor Co-Conspirator 17 that "I will be present at all sessions this year (which did satisfy [Processor Co-Conspirator 7's] counsel)."

146. But Meng's presence at meetings did not ultimately quell the Processor Conspirators' fears that their conduct was unlawful. From 2017 to 2020, spooked processors began dropping out of the WMS Survey Group due to, as an employee of Processor Co-Conspirator 14 put it, "the 'big scare'" – i.e., a private class action alleging a broiler chickens price-fixing conspiracy.

147. In response to the elimination of disaggregated data from the survey, an executive for Processor Co-Conspirator 7 complained, "how useful is the 'average rate report' now anyway? It has suffered significant obscuring of results due to aggregating, and I would ask—Is it still useful information any longer?"

148. Processor Co-Conspirator 13 left in 2018; that year, Defendant Wayne also considered leaving, but decided to remain in the group after heavy lobbying by Meng. Processor Co-Conspirators 1, 8, and 17 left in 2019.

149. In a 2019 email, an executive for Processor Co-Conspirator 7 noted that "[Processor Co-Conspirator 8] was skittish very early on in the anti-trust concerns, including their attorneys contacting other companies to warn about attending our conference."

150. In July 2019, an executive from Processor Co-Conspirator 7 sent an alert to Processor Co-Conspirator 14 and WMS describing a call his colleague received "from someone representing themselves as a private investigator from New York. The caller had questions about the types of information we shared at our meeting, the survey and other questions that I will simply call 'general anti-trust fishing' questions. . . . So just a little reminder that the bad-guys are still out there, and why we hold strict confidences about discussing wages – and have Jon [Meng] at our entire meeting." Notably, the Processor Co-Conspirator 7 executive did not say the competing processors should take care not to discuss wages, but rather take care to keep such discussions in "strict confidence."

151. And if there were any question whom the WMS participants considered the “bad-guys,” Defendant WMS’s presentation for the 2019 WMS Survey Group meeting features, at the top of the presentation’s first slide, a quote from Shakespeare: “The first thing we do, let’s kill all the lawyers.”

152. The WMS Survey Group did not meet again after this 2019 meeting.

C. Defendants Sanderson’s and Wayne’s Deceptive Practices Toward Growers

153. Growers sign contracts with Sanderson and Wayne, respectively, to raise chickens. Growers often make substantial financial investments including building or upgrading their facilities. The success of those investments depends on the compensation system they receive.

154. Under the compensation system known as the tournament system, each contract provides an average or base price that the grower receives. But the average or base price is not necessarily what the grower actually receives. The growers’ compensation depends on how each grower performs relative to other growers—in particular, on their performance relative to other growers at converting the inputs to bird weight. Growers who overperform the average are paid a bonus, while those that underperform the average are penalized. Sanderson and Wayne, however, control the major inputs the grower receives, including the chicks and feed. As a result, growers cannot reasonably assess the range of expected financial outcomes, effectively manage their risks, and properly compare contracts from competing processors.

155. Sanderson and Wayne do not adequately disclose the risk inherent in this system to the growers. Their contracts with growers omit or inadequately describe material key terms and risks that mislead, camouflage, conceal, or otherwise inhibit growers’ ability to assess the financial risks and expected return on investment. For example, the grower contracts disclose neither the minimum number of placements nor the minimum stocking density that the grower is guaranteed. The contracts also lack

material financial disclosures regarding poultry grower performance, including the range of that performance, and other terms relevant to the financial impact of the grower's investment.

156. Similarly, the contracts omit material information relating to the variability of inputs that can influence grower performance, including breed, sex, breeder flock age, and health impairments, on an ongoing basis, including at input delivery and at settlement (including information to determine the fairness of the tournament). Without this information, growers are impaired in their ability to manage any differences in inputs, or evaluate whether to invest in new infrastructure, that may arise from the Sanderson's and Wayne's operation of the tournament system. This failure to disclose is deceptive and violates the Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 192(a). These deceptions should be enjoined.

VI. ELEMENTS OF THE SHERMAN ACT CLAIM

A. The Agreement to Collaborate on Compensation Decisions, Exchange Compensation Information, and Facilitate Such Collaboration and Exchanges

157. As detailed above, the Processor Defendants collaborated on what should have been individual decisions about poultry processing plant worker compensation. As reflected by in-person meetings, correspondence, and the regular exchange of compensation information, the Processor Defendants and their co-conspirators had a mutual understanding that they would contact each other for advice, discussion, and competitively-sensitive compensation information to help each other make decisions about worker compensation at the nationwide and local level. This agreement undermined the competitive process, distorted the ordinary, free-market bargaining and

compensation-setting mechanisms, and suppressed competition and compensation for poultry processing plant workers.

158. The Processor Defendants' exchanges of current and future, disaggregated, and identifiable information about poultry processing plant worker wages and benefits, through the facilitation provided by the Consultant Defendants and through direct exchanges with each other, supported this conspiracy to collaborate. However, even standing alone, these exchanges allowed each participant to more closely align its wage and benefit offerings with its competitors, harmed the competitive process, distorted the competitive mechanism, and suppressed competition and compensation for their poultry processing plant workers.

B. Primary Poultry Processing Plant Employment is a Relevant Labor Market

159. The market for primary poultry processing plant labor is a relevant antitrust labor market. If a single employer controlled all the primary poultry processing plant jobs in a geographic market, it could profitably suppress compensation (either in wages or benefits) by a small but significant and non-transitory amount. In other words, if a poultry processing employer with buyer market power (monopsony power) chose to reduce or forgo raising its workers' wages and benefits, or otherwise worsen the compensation offered to workers, too few poultry processing workers would switch to other jobs to make the employer's choice unprofitable.

160. Labor markets are inextricably connected to the most personal choices workers make: how and where to live, work, and raise a family. In labor markets, employers compete to purchase labor from a pool of potential and actual workers by setting wages, benefits, and working conditions.

161. In choosing among potential employers, workers who may be different from each other – for example, who fill different types of jobs – may be similarly

positioned with respect to potential employers. While hourly and salaried poultry processing jobs may attract different job applicants, poultry processing plants may constitute potential employers for those workers because of commonalities shared among hourly and salaried workers (and among workers filling different roles within those categories).

162. To poultry processing plant workers, all of the Processor Conspirators are close competitors for their labor. From the perspective of workers, poultry processing jobs are distinguishable from, and not reasonable substitutes for, jobs in other industries. Many processing plant workers share common constraints that make poultry processing plant jobs accessible to them while other year-round, full-time jobs are not. Poultry processing plant workers also share common attributes and learn job-specific skills, which the poultry industry compensates more than other industries would. Thus, these particular employers compete to offer jobs to this pool of labor that these workers both have access to and that offer value for their common attributes in a way that other industries might not. Many of these workers are able to find work in the poultry industry but not in other industries that seek workers with different skills, experience, and attributes.

163. Although poultry processing plants employ varied types of workers, they occupy a common labor market. All the workers were the target of a single overarching information-sharing conspiracy. All the workers have thus had their compensation information distributed without their consent by their employer to other employers who might hire them. All the workers have developed experience, familiarity, and expertise in poultry processing plants, and all or nearly all the workers have located their households near poultry processing plants, acquired friends or colleagues in poultry plants, and have or have developed the types of personal characteristics that enable them to tolerate the harsh conditions of poultry processing plants. As a result, workers who are unsatisfied

with their current employer would normally seek, or at least consider, alternative employment in the poultry processing plants owned by their employer's co-conspirators.

164. Each of the Processor Conspirators sees poultry processing workers as sufficiently alike to find it worthwhile to place them in a common worksite, creating a cluster of jobs associated with particular market activity (poultry processing), just as grocery stores sell multiple products to customers who prefer the convenience of one-stop shopping. The common characteristics of the employees as required by the logistics of processing poultry explain why Defendants treat the employees together in the conspiracy. For these reasons, it is appropriate to consider all the workers as a common group of victims for the purpose of this action, even though the jobs in poultry processing plants differ.

165. Both chicken processing plants and turkey processing plants compete to purchase labor in this market because the jobs they seek to fill are similar. These industries use similar facilities, materials, tools, methods, job categories, and vertically-integrated processes to produce downstream products. These industries also exhibit similar difficult working conditions.

166. In addition, the poultry industry itself recognizes that poultry processing workers are a distinct market. The Processor Defendants' and Processor Conspirators' agreement to collaborate on compensation decisions included the exchange of information about both hourly and salaried plant jobs. The WMS Survey Group set criteria for membership that permitted both chicken and turkey processors to participate, but not other meat processors or other employers. When one member of the WMS Survey Group proposed including processors of red meat, this idea was rejected by the group "because the poultry processing labor market is distinct from the red meat processing labor market." Informed by their knowledge and experience, the Processor Conspirators

chose to include poultry processors in the WMS Survey Group and exclude other industries.

C. The Geographic Markets for Poultry Processing Plant Labor

167. The relevant geographic markets for poultry processing plant labor include both local submarkets and a nationwide market.

168. Local markets for poultry processing plant labor are relevant geographic markets. Many poultry processors adjust wages and benefits at a local level and based on local factors, meaning that a particular processor's compensation for job categories between different plants in different locations may differ. The Processor Conspirators made decisions affecting competition and competed on a local basis. Poultry processing workers reside within commuting distance from their plants.

169. The Processor Conspirators' anticompetitive agreement to collaborate on compensation decisions included the exchange of local data through the Consultant Defendants and Consultant Co-Conspirator 1 and the direct exchange of such data with the other Defendants and co-conspirators. For example, as Processor Co-Conspirator 18 noted in describing the CHIWI survey, "With this information, we feel that we are in a better position to strategically evaluate wages on a location by location level."

170. Employed poultry processing plant workers reside within commuting distance from the plant at which they work. In addition, many applicants to these jobs reside within commuting distance from the plant to which they have applied, at the time they have applied. Thus, if multiple processing plants are located within a worker's commuting boundary, those plants are potential competitors for that worker's labor.

171. The relevant local submarkets can be identified according to workers' willingness and ability to commute. The local submarkets here are those in which, according to data from the United States Department of Agriculture, at least two Processor Conspirators compete with each other for primary poultry processing plant

workers. In these relevant local submarkets, it is likely that the Processor Conspirators together hold market power, because they control over 80 percent, and in many local submarkets, control 100 percent, of primary poultry processing plant jobs. A hypothetical monopsonist of poultry processing plant labor jobs in each local labor submarket would likely be able to suppress compensation for poultry processing plant workers by a small, but significant, amount.

172. The local labor submarkets in which the Processor Defendants and Processor Conspirators have suppressed competition, which suppressed poultry processing plant workers' compensation, include:

a. the "Eastern Shore Poultry Region": containing eleven primary poultry processing facilities⁷ in Hurlock, MD; Salisbury, MD; Princess Anne, MD; Harbeson, DE; Millsboro, DE; Selbyville, DE; Georgetown, DE; Milford, DE; Norma, NJ; Accomac, VA; and Temperanceville, VA, four of which are owned by Processor Co-Conspirator 14, five of which are owned by other Processor Conspirators, and two of which are owned by other poultry processors;

b. the "Central Valley Poultry Region": containing three primary poultry processing facilities in Fresno, CA and Sanger, CA, two of which are owned by Processor Co-Conspirator 7, and one of which is owned by another Processor Conspirator;

c. the "West-Central Missouri Poultry Region": containing two primary poultry processing facilities in California, MO and Sedalia, MO, one of which is owned by Defendant Cargill, and one of which is owned by another Processor Conspirator;

⁷ The number of primary poultry processing facilities in the Complaint is based on data from the United States Department of Agriculture on chicken and turkey slaughtering from 2022 and excludes facilities designated as "Very Small."

d. the “Ozark Poultry Region”: containing nineteen primary poultry processing facilities in Huntsville, AR; Ozark, AR; Springdale, AR; Fort Smith, AR; Clarksville, AR; Dardanelle, AR; Green Forest, AR; Waldron, AR; Danville, AR; Carthage, MO; Cassville, MO; Southwest City, MO; Monett, MO; Noel, MO; Heavener, OK; and Jay, OK, three of which are owned by Processor Co-Conspirator 3, one of which is owned by Processor Co-Conspirator 17, one of which is owned by Defendant Wayne, one of which is owned by Defendant Cargill, twelve of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

e. the “Ouachita Poultry Region”: containing five primary poultry processing facilities in De Queen, AR; Grannis, AR; Hope, AR; Nashville, AR; and Broken Bow, OK, one of which is owned by Processor Co-Conspirator 15, and four of which are owned by another Processor Conspirator;

f. the “East Texas Poultry Region”: containing four primary poultry processing facilities in Lufkin, TX; Nacogdoches, TX; Carthage, TX; and Center, TX, two of which are owned by Processor Co-Conspirator 15, and two of which are owned by another Processor Conspirator;

g. the “River Valley Poultry Region”: containing three primary poultry processing facilities in Union City, TN; Humboldt, TN; and Hickory, KY, one of which is owned by Processor Co-Conspirator 15, and two of which are owned by another Processor Conspirator;

h. the “Western Coal Fields Poultry Region”: containing two primary poultry processing facilities in Cromwell, KY and Robards, KY, one of which is owned by Processor Co-Conspirator 14, and one of which is owned by another Processor Conspirator;

i. the “North/South Carolina Poultry Region”: containing seven primary poultry processing facilities in Lumber Bridge, NC; Rockingham, NC;

Marshville, NC; St. Pauls, NC; Monroe, NC; and Dillon, SC, two of which are owned by Processor Co-Conspirator 14, two of which are owned by Processor Co-Conspirator 15, one of which is owned by Defendant Sanderson, two of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

j. the “Northern Georgia Poultry Region”: containing eleven primary poultry processing facilities in Cornelia, GA; Murrayville, GA; Gainesville, GA; Athens, GA; Canton, GA; Ellijay, GA; Cumming, GA; Bethlehem, GA; Marietta, GA; and Pendergrass, GA, two of which are owned by Processor Co-Conspirator 7, four of which are owned by Processor Co-Conspirator 15, one of which is owned by Defendant Wayne, two of which are owned by other Processor Conspirators, and two of which are owned by other poultry processors;

k. the “Central Georgia Poultry Region”: containing two primary poultry processing facilities in Perry, GA and Vienna, GA, one of which is owned by Processor Co-Conspirator 14, and one of which is owned by another Processor Conspirator;

l. the “Chattanooga Poultry Region”: containing two primary poultry processing facilities in Chattanooga, TN, one of which is owned by Processor Co-Conspirator 15, and one of which is owned by another Processor Conspirator;

m. the “Central North Carolina Poultry Region”: containing two primary poultry processing facilities in Sanford, NC; and Siler City, NC, one of which is owned by Processor Co-Conspirator 15, and one of which is owned by another Processor Conspirator;

n. the “Southern Alabama/Georgia Poultry Region”: containing seven primary poultry processing facilities in Enterprise, AL; Dothan AL; Jack AL; Union Springs AL; Bakerhill, AL; Montgomery AL; and Bluffton, GA, one of which is owned by Processor Co-Conspirator 15, three of which are owned by Defendant Wayne, two of

which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

o. the “Northern Alabama Poultry Region”: containing eleven primary poultry processing facilities in Guntersville, AL; Russellville, AL; Albertville, AL; Decatur, AL; Blountsville, AL; Collinsville, AL; Gadsden, AL; Jasper, AL; Cullman, AL; and Tuscaloosa AL, two of which are owned by Processor Co-Conspirator 15, two of which are owned by Defendant Wayne, five of which are owned by other Processor Conspirators, and two of are owned by other poultry processors;

p. the “Western North Carolina Poultry Region”: containing four primary poultry processing facilities in Dobson, NC; Wilkesboro, NC; Morganton, NC; and Winston-Salem, NC, one of which is owned by Defendant Wayne, two of which are owned by other Processor Conspirators, and one of which is owned by another poultry processor;

q. the “Virginia/West Virginia Poultry Region”: containing eight primary poultry processing facilities in Timberville, VA; Moorefield, WV; Dayton, VA; Edinburg, VA; Harrisonburg, VA; New Market, VA; and Hinton, VA, two of which are owned by Processor Co-Conspirator 15, one of which is owned by Defendant Cargill, two of which are owned by other Processor Conspirators, and three of which are owned by other poultry processors;

r. the “Laurel Poultry Region”: containing six primary poultry processing facilities in Collins, MS; Laurel, MS; Hattiesburg, MS; Bay Springs, MS; and Moselle MS, two of which are owned by Defendant Sanderson, one of which was owned by Defendant Wayne until 2021 and is now owned by another Processor Conspirator, one of which is owned by another Processor Conspirator, and at least two of which are owned by other poultry processors; and

s. the “Southern Georgia Poultry Region”: containing three primary poultry processing facilities in Moultrie, GA; Camilla, GA; and Bluffton, GA, one of which was owned by Defendant Sanderson, one of which is owned by another Processor Conspirator, and one of which is owned by another poultry processor.

173. The United States is also a relevant geographic market for primary poultry processing plant labor. Poultry processing plant jobs outside the United States are not reasonable substitutes for workers seeking employment in the United States.

174. Many poultry processors make significant compensation decisions at a nationwide level. The executives in charge of such decisions often set nationwide policies or budgets for processors’ wages and benefits. These nationwide decisions then influence local decisions, such as setting different wage base rates between particular local plants. At least one Processor Conspirator, Defendant Sanderson, sets its processing plant workers’ wages at a nationwide level, meaning workers in the same position at different plants in different local areas receive the same base compensation.

175. Poultry processors also sometimes recruit workers from beyond the local regions where particular plants are located. For example, they may make use of their current workers’ personal connections to recruit their friends or family members internationally, such as by giving referral bonuses to current workers. And some workers move between states or internationally to take processing plant jobs.

176. The Processor Defendants also viewed themselves as part of a nationwide market for poultry processing plant work. They gave significant time, expertise, and money over at least two decades to participate in the nationwide WMS Survey Group, including traveling to Florida (or another resort destination) to meet in person and swap compensation information about both hourly and salaried workers with poultry processors from across the country. The Steering Committee of the WMS Survey Group

restricted the Group's membership to poultry processors with at least three plant locations nationwide.

177. Informed by their knowledge of and experience with their labor pool of potential and actual poultry processing plant workers, the Processor Conspirators chose to compose the WMS Survey Group to include poultry processors nationwide. The Processor Conspirators are not likely to have wasted their time and money on useless information exchanges. Thus, the Processor Conspirators, with the help of Defendants WMS and Meng and Consultant Co-Conspirator 1, formed their agreement to collaborate on compensation decisions, including through the anticompetitive exchange of compensation information, at a nationwide level.

178. The Processor Conspirators together control more than 90 percent of poultry processing plant jobs nationwide. A hypothetical monopsonist of poultry labor jobs nationwide would likely be able to suppress compensation for poultry workers by a small, but significant, amount.

D. Market Power

179. Together, the Processor Conspirators control over 90 percent of poultry processing plant jobs nationwide; the four largest of the Processor Conspirators control about half of that share. The Processor Conspirators also control at least 80 percent of poultry processing jobs in relevant local submarkets.

180. Further, many poultry processing plants are located in rural areas near poultry grower operations. The processors likely have even greater buyer market power in these markets, in which there are often fewer full-time, year-round jobs available than in more heavily populated areas.

181. Finally, the nature of labor markets generally means employers have market power at far lower levels of market share than the Processor Conspirators have here. Labor markets are matching markets—employees cannot simply switch jobs like a

customer switches from one beverage to another. Finding a new job takes time, effort, and often, money. The new employer has to offer the job to the worker, while the employee must overcome the inertia provided by an existing job, even if it is an unfavorable one, to seek out and find, interview for, and accept the new job. Employees often have less freedom to move to take a new job due to family commitments such as their spouse's employment, their children's education, or the need to provide care to family members. Thus, workers are more likely to stay in the jobs they already have than consumers are to continue to buy the same product; labor markets come with a level of "stickiness" that many product markets do not.

E. Anticompetitive Effects: Processor Conspirators' Conspiracy Anticompetitively Affected Decisions About Compensation for Plant Processing Workers

182. The Processor Conspirators' pervasive and decades-long conspiracy and anticompetitive exchange of current and future, disaggregated, and identifiable information, facilitated and furthered by the Consultant Defendants, suppressed compensation for poultry processing plant workers nationwide. This anticompetitive agreement distorted the competitive mechanism for wage-setting and robbed poultry processing plant workers of the benefits of full and fair competition for their labor.

183. In labor markets, reductions to absolute compensation are unusual. Thus, the anticompetitive effects of agreements in such markets are most likely to be reflected in compensation remaining flat or increasing at a lower rate than would have occurred without the anticompetitive conduct.

184. The Processor Defendants' anticompetitive information sharing about poultry processing plant worker compensation supported their larger conspiracy to collaborate with competitors on their own compensation decisions. Both their broader conspiracy to collaborate and their information sharing suppressed competition among

them and led to compensation that was lower than it would have been without either the larger conspiracy or the information sharing alone.

185. As the Processor Defendants themselves admitted to each other in emails, they used the current and future, disaggregated, and identifiable compensation data they exchanged directly and through consultants when making compensation decisions company-wide and for specific positions and plant locations. Because the shared information allowed the Processor Defendants to understand how their competitors currently compensated plant workers, or were planning to in the future, the information they exchanged allowed the Processor Defendants to offer lower compensation than they would have had to absent their agreement. The Processor Defendants' collaboration distorted the typical competitive process in which they would have had to fully and fairly compete by making their own independent choices about what wages and benefits to offer workers.

186. Further, because of the length of time the Processor Defendants were able to engage in their conspiracy and their financial interest in keeping their labor costs below competitive levels, they are likely to continue collaborating and exchanging compensation information unless they are enjoined from doing so.

187. Conduct by multiple Defendants in 2009 illustrates the types of effects likely to have occurred as a result of the Defendants' conduct.

188. In January 2009, an executive at Processor Co-Conspirator 14 emailed Defendants Cargill, Sanderson, and Wayne and Processor Co-Conspirators 6, 7, 8, 15, and 18 seeking her competitors' help on the question of "plant and merit increases" for the next year. She described to her competitors that "Our fiscal year begins 03/30/09, and, we have recently started talking about delaying." She asked these competitors, "I am curious to find out if anyone has (or is in discussions) about postponing plant or merit increases." In addition, in the same email, she noted, "I know there has been some

previous dialogue about plant and merit increases.” This correspondence both makes clear that Processor Co-Conspirator 14 was seeking its competitors’ assistance in making its own wage decisions and suggests that the competitors had held similar discussions before. The Processor Co-Conspirator 14 executive sent her email directly in response to a question from an executive for Processor Co-Conspirator 6 about making travel and scheduling arrangements to meet in person for the annual WMS Survey Group meeting.

189. In July 2009, a strikingly similar discussion took place between Processor Co-Conspirator 17 and Processor Co-Conspirators 8 and 18. Processor Co-Conspirator 8’s Vice President of Human Resources emailed at least two of Processor Co-Conspirator 8’s competitors, Processor Co-Conspirator 17 and Processor Co-Conspirator 18, disclosing to Processor Co-Conspirator 17 that “we are working on budgets for our next fiscal year. . . . We are looking at a raise in September/Oct. and have not decided on the amount yet...we’re surveying the other poultry companies to get a feel for what they are going to do.” As a result, he asked Processor Co-Conspirator 17, “Do you know what [Processor Co-Conspirator 17] is planning on giving in the way of % or \$ amount for your processing plants? What month will the raise go into effect?” He concluded, “I will be happy to let you know our decision within the next week.” Processor Co-Conspirator 17’s VP of People Services responded to the Processor Co-Conspirator 8 executive that “We have no plans at this time to give increases.”

190. The Processor Co-Conspirator 8 executive made a similar disclosure to Processor Co-Conspirator 18— “We are budgeting for our next fiscal year”—as well as a similar request— “and was wondering what [Processor Co-Conspirator 18] is going to do as far as Plant Wages in November? Do you know the % amount or \$ amount that [Processor Co-Conspirator 18] will be giving in Springdale and Monett, MO?” The Processor Co-Conspirator 8 executive also, as he did with Processor Co-Conspirator 17, promised an exchange: “I will be able to give you ours within the next week or so as

well.” The Processor Co-Conspirator 18 executive responded, “Sorry, we don’t know yet what we are going to do,” to which the Processor Co-Conspirator 8 executive replied “will you please share with me once you know?”

191. A later document from July 2010 states that the effective date of Processor Co-Conspirator 18’s last plant-wide wage raise was in November 2008, suggesting that Processor Co-Conspirator 18, like Processor Co-Conspirator 17, did not raise its wages in 2009.

192. While in the years before and after 2009, Processor Co-Conspirator 8 typically raised its hourly plant worker wages, in 2009 itself, after hearing directly from its competitor Processor Co-Conspirator 17, and potentially also from its competitor Processor Co-Conspirator 18, Processor Co-Conspirator 8 chose not to raise its hourly worker wages. Thus, because Processor Co-Conspirator 8 collaborated with its competitors through the direct sharing of future compensation information, and received comfort from those competitors that they did not plan to raise their employees’ wages, Processor Co-Conspirator 8’s processing plant employees suffered a harmful effect.

193. Evidence of harmful effects from an information-sharing conspiracy is not restricted to denials of wage raises or choices not to grant benefits. If each participant in a labor market is suppressing its compensation levels by using information about its competitors’ compensation plans to make smaller and more targeted wage increases than it would have absent such information sharing, wages will rise more slowly, and for fewer workers, than they would have without the conspiracy.

194. For example, in 2013, Processor Co-Conspirator 18’s Director of Labor Compensation informed her coworkers that in preparation for internal decision-making about plant wages, Processor Co-Conspirator 18 “completed a third-party survey with competing poultry companies. With this information, we feel that we are in a better position to strategically evaluate wages on a location by location level.” Attached to this

email are charts using data exchanged about competing processors' base wage rates through the WMS Survey Group, as well as other documents to which "We [Processor Co-Conspirator 18] have added the [Consultant Co-Conspirator 1] wages and ranking" and "maintenance start and base rates by [Consultant Co-Conspirator 1] region." At least three of these charts marked specific plants for which Processor Co-Conspirator 18, as compared to the averages of other processors' plants in that region, was paying below median wages for the industry.

195. The information exchange informed Processor Co-Conspirator 18 exactly where and by how much it would have to increase wages to match its competitors; the exchange deprived plant workers, who lack any comparable information, of an independent effort by Processor Co-Conspirator 18 to recruit and hire workers by competing against other processors.

196. Defendant Wayne has admitted that it used its collaboration with the Processor Conspirators, and the information they exchanged with each other, in this way. Wayne's compensation strategy was to pay wages at or near the midpoint of compensation (i.e. 50%) for its workers as compared to its competitors. Wayne's discussions and exchange of compensation information with the Processor Conspirators allowed it to more precisely target what the mid-point of compensation would be, suppressing the rise in compensation that might otherwise have occurred if Wayne had less ability to target that mid-point.

197. Similarly, Defendant Cargill used discussions and exchange of compensation information with the Processor Conspirators to assist in determining the "salary bands" it would set for salaried worker positions. Cargill sent these band amounts to local plant managers to inform the setting of local wages. Cargill admitted that on at least one occasion the WMS Survey Group compensation data influenced Cargill's

decision to lower the salary band range for plant supervisors from where it had originally set that band.

198. The Processor Conspirators' compensation information exchanges therefore distorted compensation-setting processes in the poultry processor plant worker labor market and harmed the competitive process.

VII. VIOLATIONS ALLEGED

A. COUNT I: SHERMAN ACT SECTION 1 (ALL DEFENDANTS)

199. The United States repeats and realleges paragraphs 1 through 198 as if fully set forth herein.

200. The Processor Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing to collaborate with and assist their competitors in making poultry processing worker compensation decisions, to exchange current and future, disaggregated, and identifiable information about their compensation of poultry processing plant workers, and to facilitate this collaboration and such exchanges. This agreement suppressed compensation for poultry processing workers for decades.

201. This agreement included more than 20 years of discussions between and among these competitors about wage and benefit policies and amounts, which went well beyond the sharing of information and included consultation and advice-giving—as one processor put it, “a collaborative working relationship”—on decisions that were competitively sensitive and should have been made independently.

202. The agreement also included exchanging (or, for the Consultant Defendants, facilitating the exchange of) competitively sensitive information about poultry processing plant workers' wages and benefits at both local levels and the national level. Such exchanges allowed these competitors to understand wages and benefits paid or planned by specific competitors, in specific places, to specific types of workers.

(Standing alone, these exchanges of information would constitute a violation of Section 1 of the Sherman Act.)

203. The Processor Defendants themselves understood that their anticompetitive agreement likely raised serious legal concerns. They went to great lengths to keep their exchanges confidential. Some expressed their concerns explicitly; others abandoned some of the larger-group exchanges once antitrust investigations and private lawsuits began to uncover their behavior. The Processor Defendants and Processor Conspirators nonetheless continued exchanging information through less observable methods, for example through Consultant Co-Conspirator 1.

204. The Processor Conspirators' market power increases their agreement's likely anticompetitive effects. In relevant local labor submarkets, they control more than 80 percent of poultry processing jobs—in some areas, likely 100 percent of poultry processing jobs—and thus have market power in local markets for poultry processing plant workers. They enjoy outside market power over the supply of poultry processing plant jobs in these local areas, in which they are often among the largest employers. In the national market, they control over 90 percent of poultry processing jobs nationwide, and thus have buyer market power in the nationwide market for poultry processing plant workers. Their choice to collaborate on compensation decisions and to exchange information, even though they had buyer market power, disrupted the competitive mechanism for negotiating and setting wages and benefits for poultry processing plant workers and harmed the competitive process.

205. As described in more detail in paragraphs 1 through 204 above, from 2000 or earlier to the present, Defendants Cargill, Sanderson, Wayne, WMS, and G. Jonathan Meng agreed to collaborate with and assist their competitors in making compensation decisions and to exchange current and future, disaggregated, and identifiable

compensation information, or to facilitate this anticompetitive agreement, an unlawful restraint of trade under Section 1 of the Sherman Act, 15 U.S.C. § 1.

206. There is no justification, procompetitive or otherwise, for large, profitable, and sophisticated competitors collaborating with the effect of suppressing wages and benefits for their workers.

207. The Defendants' agreement to collaborate on compensation decisions, exchange current and future compensation information, and facilitate those collaborations and exchanges suppressed poultry processing plant worker compensation. It constitutes an unreasonable restraint of interstate trade and commerce in the nationwide and in local labor markets for hourly and salaried poultry processing plant workers. This offense is likely to continue and recur unless this court grants the requested relief.

**B. COUNT II: PACKERS AND STOCKYARD ACT SECTION 202(a)
(DEFENDANTS SANDERSON AND WAYNE ONLY)**

208. The United States repeats and realleges paragraphs 1 through 207 as if fully set forth herein.

209. Defendants Sanderson and Wayne violated Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 192(a), by engaging in deceptive practices regarding their contracts with growers. These deceptions deprived growers of material information necessary to make informed decisions about their contracting opportunities and to compare offers from different poultry processors.

210. Defendants Sanderson and Wayne are "live poultry dealers" under 7 U.S.C. § 182(10), because each is engaged in the business of obtaining live poultry under a poultry growing arrangement for the purpose of slaughtering it.

211. Defendants Sanderson's and Wayne's grower contracts concern "live poultry" under 7 U.S.C. §§ 182(6), 192, because the contracts concerned the raising of live chickens.

212. Defendants Sanderson and Wayne each engaged in deceptive practices through their grower contracts, which omitted material disclosures about how each compensates growers. Those disclosures would have provided information the grower needs to effectively compete in the tournament system and allowed growers to evaluate their likely return and risks, including, among other things the variability of inputs the grower would receive, the risks regarding downside penalties for underperforming relative to other growers in the tournament system.

213. Defendants Sanderson's and Wayne's deceptive practices are ongoing and likely to continue and recur unless the court grants the requested relief.

VIII. REQUESTED RELIEF

214. The United States requests that this Court:

a. rule that Defendants' conspiracy to collaborate on processing plant compensation decisions, including through the exchange of compensation information, has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. rule that Defendants' exchange of compensation information itself, without more, has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

c. permanently enjoin and restrain all Defendants from collaborating on decisions related to worker wages and benefits with any other company engaged in poultry growing or processing or the sale of poultry products;

d. permanently enjoin and restrain all Defendants from sharing, or facilitating the sharing of, information about compensation for their workers with any other company engaged in poultry growing or processing or the sale of poultry products, whether that sharing is direct or indirect;

- e. require all Defendants to take such internal measures as are necessary to ensure compliance with that injunction;
- f. impose on all Defendants a Monitoring Trustee to ensure compliance with the antitrust laws;
- g. grant equitable monetary relief;
- h. permanently enjoin and restrain Defendants Sanderson and Wayne from engaging in deceptive practices regarding their contracts with growers;
- i. require Defendants Sanderson and Wayne to make appropriate disclosures to growers before entering into contracts concerning live poultry, in order to provide sufficient information for the growers to understand the scope of the contract and the potential risks;
- j. require Defendants Sanderson and Wayne to modify their grower compensation systems to eliminate the harm arising from each firm's failure to disclose to growers all of the potential risks associated with that firm's compensation system;
- k. grant other relief as required by the nature of this case and as is just and proper to prevent the recurrence of the alleged violation and to dissipate its anticompetitive effects, including such structural relief as may be necessary to prevent the anticompetitive effects caused by the challenged conduct and described in this Complaint;
- l. award the United States the costs of this action; and
- m. award such other relief to the United States as the Court may deem just and proper.

Dated: July 25, 2022

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARGILL MEAT SOLUTIONS CORP.,
et. al.,

Defendants.

Civil Action No.: 22-cv-1821
(Gallagher, J.)

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on July 25, 2022, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 202(a) of the Packers and Stockyards Act, 7 U.S.C. § 192(a);

AND WHEREAS, the United States and Defendants Cargill Meat Solutions Corp., Cargill, Inc., Sanderson Farms, Inc., and Wayne Farms, LLC (collectively, “Settling Defendants”) have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

AND WHEREAS, Settling Defendants agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

AND WHEREAS, Settling Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and each of the parties named herein. The Complaint states a claim upon which relief may be granted against the Settling Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 202(a) of the Packers and Stockyards Act, 7 U.S.C. § 192(a).

II. DEFINITIONS

As used in this Final Judgment:

A. “Agreement” means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

B. “Base Payment” means the standard payment (currently subject to adjustment up or down based upon a Grower’s performance on a given flock as compared to a peer group) made by the Settling Defendants to a Grower that supplies broiler chickens for processing in the Settling Defendants’ facilities, such as the standard payment characterized as the “base pay per pound” and set forth in Schedule 1 of the current Wayne Farms Broiler Production Agreement and the “Base Pay” as set forth in the Payment Schedule attached to the Sanderson Farms, Inc. (Production Division) Broiler Production Agreement.

C. “Cargill, Inc.” means Defendant Cargill, Incorporated, a privately-held company headquartered in Wayzata, Minnesota, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Cargill Meat Solutions” means Defendant Cargill Meat Solutions Corporation, a Delaware company headquartered in Wichita, Kansas, that is a wholly owned subsidiary of Cargill, Inc., and its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “CMS Secondary Processing Facilities” means Cargill Meat Solutions facilities that are not slaughter facilities and that further process (such as cooking, marinating, grinding, portioning, seasoning, smoking, breasting, or battering) raw Poultry materials obtained or received from a slaughter facility.

F. “Communicate” means to discuss, disclose, transfer, disseminate, circulate, provide, request, solicit, send, receive or exchange information or opinion, formally or informally, directly or indirectly, in any manner, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, including surveys, or face-to-face meetings.

G. “Compensation” means all forms of payment for work, including salaried pay, hourly pay, regular or ad hoc bonuses, over-time pay, and benefits, including healthcare coverage, vacation or personal leave, sick leave, and life insurance or disability insurance policies.

H. “Competitively Sensitive Information” means information that is relevant to, or likely to have an impact on, at least one dimension of competition, including price, cost (including Compensation), output, quality, and innovation. Competitively Sensitive Information includes prices, strategic plans, amounts and types of Compensation, formula and algorithms used for calculating Compensation or proposed Compensation, other information related to costs or profits, markets, distribution, business relationships, customer lists, production capacity, and any confidential information the exchange of which could harm competition.

I. “Consulting Firm” means any organization, including Webber, Meng, Sahl & Company, Inc. and Agri Stats, Inc., that gathers, sorts, compiles, and/or sells information about Compensation for Poultry Processing Workers, or provides advice

regarding Compensation for Poultry Processing Workers; “Consulting Firm” does not include job boards, employment agencies or other entities that facilitate employment opportunities for employees.

J. “Disclosure Requirements” means the entirety of Section V of “Transparency in Poultry Grower Contracting and Tournaments,” a proposed rule by the U.S. Department of Agriculture’s Agricultural Marketing Service on June 8, 2022, 87 FR 34980, *available at* <https://www.federalregister.gov/documents/2022/06/08/2022-11997/transparency-in-poultry-grower-contracting-and-tournaments>.

K. “Grower” means any person engaged in the business of raising and caring for live Poultry for slaughter by another, whether the Poultry is owned by such a person or by another, but not an employee of the owner of such Poultry.

L. “Human Resources Staff” means any and all full-time, part-time, or contract employees of Settling Defendants, wherever located, whose job responsibilities relate in any way to hiring or retaining workers, employment, or evaluating, setting, budgeting for, administering, or otherwise affecting Compensation for Poultry Processing Workers, and any other employee or agent working at any of those employees’ direction.

M. “Including” means including, but not limited to.

N. “Incentive Payment” means a payment made by a Settling Defendant to a Grower that supplies broiler chickens for processing in the Settling Defendants’ facilities based upon a Grower’s performance on a given flock as compared to a peer group. Incentive Payment does not include payments based on factors other than relative performance, such as payment for a Grower’s investments in improved facilities or technology or payments to subsidize the costs of utilities.

O. “*Jien*” means the case *Jien v. Perdue Farms, Inc.*, No. 1:19-cv-2521 (D. Md.).

P. “Management” means all directors and executive officers of Settling Defendants, or any other of Settling Defendants’ employees with management or supervisory responsibilities related to hiring, employment, or Compensation of Poultry Processing plant labor, including Poultry Processing plant managers.

Q. “Person” means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

R. “Poultry” means chicken or turkey.

S. “Poultry Processing” means the business of raising, slaughtering, cleaning, packing, packaging, and related activities associated with producing Poultry, including activities conducted by Poultry Processors at integrated feed mills, hatcheries, and processing plant facilities and the management of those activities; “Poultry Processing” does not include Cargill Meat Solutions’ egg businesses or any of the CMS Secondary Processing Facilities, but it does include the downstream sale of products made from Poultry transferred from one of Cargill Meat Solutions’ slaughter facilities to one of the CMS Secondary Processing Facilities.

T. “Poultry Processing Worker” means anyone paid any Compensation, directly or indirectly (such as through a temporary employment agency or third-party staffing agency), by a Poultry Processor related to Poultry Processing, including temporary workers, permanent workers, employees, workers paid hourly wages, workers paid salaried wages, and workers paid benefits.

U. “Poultry Processor” means any person (1) who is engaged in Poultry Processing or (2) that has full or partial ownership or control of a Poultry Processing facility, or (3) that provides Compensation to Poultry Processing Workers; “Poultry Processor” does not include staffing agencies or other entities that are not owned, operated, or controlled by a person engaged in Poultry Processing or that owns or

controls, in full or part, Poultry Processing facilities, that make individuals available to work at Poultry Processing facilities.

V. “Restitution Amount” means \$15 million for Cargill Meat Solutions, \$38.3 million for Sanderson, and \$31.5 million for Wayne.

W. “Sanderson” means Defendant Sanderson Farms, Inc., a publicly traded Mississippi corporation headquartered in Laurel, Mississippi, and its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents and employees. Continental Grain Company is not an affiliate, successor or assign of Sanderson Farms, Inc.

X. “Wayne” means Defendant Wayne Farms, LLC, a Delaware company headquartered in Oakwood, Georgia, the controlling shareholder of which is Continental Grain Company, a privately-held firm headquartered in New York, New York, and its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

III. APPLICABILITY

This Final Judgment applies to Settling Defendants and all other persons in active concert or participation with them who receive actual notice of this Final Judgment.

IV. PROHIBITED CONDUCT

A. Management and Human Resources Staff of each Settling Defendant must not, whether directly or indirectly, including through a Consulting Firm or other person:

1. participate in any meeting or gathering (including in-person, virtual, and telephonic meetings and gatherings) related to Compensation for Poultry Processing Workers, or for any purpose related to Compensation for Poultry Processing Workers, at which any other Poultry Processor not owned or operated by one or a combination of Settling Defendants is present;

2. Communicate Competitively Sensitive Information about Compensation for Poultry Processing Workers with any Poultry Processor not owned or operated by one or a combination of Settling Defendants, including about types, amounts, or methods of setting or negotiating Compensation for Poultry Processing Workers;

3. attempt to enter into, enter into, maintain, or enforce any Agreement with any Poultry Processor not owned or operated by one or a combination of Settling Defendants about Poultry Processing Worker Compensation information, including how to set or decide Compensation or the types of Compensation for Poultry Processing Workers;

4. Communicate Competitively Sensitive Information about Compensation for Poultry Processing Workers to any Poultry Processor not owned or operated by one or a combination of Settling Defendants, including Communicating Competitively Sensitive Information about Compensation for Poultry Processing Workers to any Consulting Firm that produces reports regarding Compensation for Poultry Processing Workers that are shared with other Poultry Processors;

5. use non-public, Competitively Sensitive Information about Compensation for Poultry Processing Workers from or about any Poultry Processor not owned or operated by one or a combination of Settling Defendants; or

6. encourage or facilitate the communication of Competitively Sensitive Information about Compensation for Poultry Processing Workers to or from any Poultry Processor not owned or operated by one or a combination of Settling Defendants.

B. Settling Defendants must not knowingly use from any Poultry Processor not owned or operated by one or a combination of Settling Defendants or any of that Poultry Processor's officers, consultants, attorneys, or other representatives any Competitively Sensitive Information about Compensation for Poultry Processing

Workers except as set forth in Section V or in connection with pending or threatened litigation as a party or fact witness, pursuant to court order, subpoena, or similar legal process, or for which any Settling Defendant has received specific prior approval in writing from the Division.

C. From and after the date that is 10 business days after entry of this Final Judgment, Sanderson and Wayne must not reduce the Base Payment made to any Grower supplying broiler chicken to the Settling Defendants as a result of that Grower's performance or as a result of the Grower's performance in comparison with the performance of other Growers supplying the Settling Defendants. This Section IV does not prohibit the Settling Defendants from:

1. offering Incentive Payments, so long as total Incentive Payments paid for flocks processed at a single complex do not exceed 25% of the sum of total Base Payments and total Incentive Payments paid for flocks processed at that complex on an annual basis;
2. offering payments other than Incentive Payments to Growers for any lawful reason, including offering payments based upon the Grower's investments in improved facilities or technology or payments to subsidize the costs of utilities;
or
3. offering contracts with a lower Base Payment if the Grower will be rearing different types of flocks (e.g., based on sex, breed, method of raising, target market weight, etc.) so long as the Base Payment offered is consistent with the base rates offered to other Growers in the complex rearing those types of flocks.

D. The Settling Defendants must not retaliate against any employee or third party, such as a Grower, for disclosing information to the monitor described in Section VI, a government antitrust enforcement agency, or a government legislature.

V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV prohibits a Settling Defendant from Communicating, using, or encouraging or facilitating the Communication of, its Competitively Sensitive Information with an actual or prospective Poultry Processing Worker, or with the Poultry Processing Worker's labor union or other bargaining agent, except that, if a prospective Poultry Processing Worker is employed by another Poultry Processor, Settling Defendants' Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the prohibitions of Section IV only insofar as is necessary to negotiate the Compensation of a prospective Poultry Processing Worker. Settling Defendants are not prohibited from internally using Competitively Sensitive Information received from a prospective Poultry Processing Worker who is employed by a Poultry Processor in the ordinary course of a legitimate hiring, retention, or off-boarding process, but Settling Defendants are prohibited from Communicating that Competitively Sensitive Information to another Poultry Processor.

B. Nothing in Section IV prohibits the Settling Defendants from (1) sharing information with or receiving information from a staffing agency or entity that is not owned or controlled by any Poultry Processor, that facilitate employment, if necessary to effectuate an existing or potential staffing Agreement between the staffing agency or entity and the Settling Defendants; and (2) advertising Compensation through public job postings, billboards or help wanted advertisements.

C. Nothing in Section IV prohibits Settling Defendants from, after securing advice of counsel and in consultation with their respective antitrust compliance officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any Agreement to Communicate Competitively Sensitive Information relating to Compensation for Poultry Processing

Workers with any Poultry Processor when such Communication or use is for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of assets:

1. For all Agreements under Paragraph V(C) with any other Poultry Processor to Communicate Competitively Sensitive Information relating to Poultry Processing Workers that a Settling Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, the Settling Defendant must maintain documents sufficient to show:
 - i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relating to Compensation for Poultry Processing Workers relates;
 - ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information relating to Compensation for Poultry Processing Workers;
 - iii. with specificity the Competitively Sensitive Information relating to Compensation for Poultry Processing Workers Communicated; and
 - iv. the termination date or event of the sharing of Competitively Sensitive Information relating to Compensation for Poultry Processing Workers.
2. For Communications under Paragraph V(C), Settling Defendants must maintain copies of all materials required under Paragraph V(C)(1) for the duration of the Final Judgment, following entry into any Agreement to Communicate or receive Competitively Sensitive Information, and must make such documents available to the United States and the monitor appointed under Section VI upon request.

D. Nothing in Section IV prohibits Settling Defendants, after securing the advice of counsel and in consultation with the antitrust compliance officer, from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

E. Nothing in Paragraph IV(A)(1) prohibits Settling Defendants from participating in meetings and gatherings in which they receive (but do not provide) information relating to Compensation that is not based upon information received from or about one or more Poultry Processors.

VI. MONITOR

A. Upon application of the United States, which Settling Defendants may not oppose, the Court will appoint a monitor selected by the United States and approved by the Court. Within 30 calendar days after entry of the Stipulation and Order in this case, the Settling Defendants may together propose to the United States a pool of three candidates to serve as the monitor, and the United States may consider the Settling Defendants' perspectives on the Settling Defendants' three proposed candidates or any other candidates identified by the United States. The United States retains the right, in its sole discretion, either to select the monitor from among the three candidates proposed by the Settling Defendants or to select a different candidate for the monitor.

B. The monitor will have the power and authority to monitor: (1) Settling Defendants' compliance with the terms of this Final Judgment entered by the Court, including compliance with Paragraph IV(C), and (2) Settling Defendants' compliance, regarding events occurring after entry of the Stipulation and Order in this case (even if such events began before that date), with the U.S. federal antitrust laws relating to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, and the sale of Poultry and

Poultry Processing products. The monitor may also have other powers as the Court deems appropriate. The monitor's power and authority will not extend to monitoring the processing of meat or material other than Poultry, even if such processing of meat or material other than Poultry takes place in a facility or location that also engages in Poultry Processing. The monitor's power and authority will not extend to monitoring Cargill, Inc., employees who have not engaged in work related to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, or the sale of Poultry or Poultry Processing products. The monitor will have no right, responsibility or obligation for the operation of Settling Defendants' businesses. No attorney-client relationship will be formed between the Settling Defendants and the monitor.

C. The monitor will serve at the cost and expense of Settling Defendants pursuant to a written Agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

D. The monitor may hire, at the cost and expense of Settling Defendants, any agents and consultants, including attorneys and accountants, that are reasonably necessary in the monitor's judgment to assist with the monitor's duties. These agents or consultants will be solely accountable to the monitor and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

E. The compensation of the monitor and agents or consultants retained by the monitor must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitor and Settling Defendants are unable to reach agreement on the monitor's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the monitor, the United States,

in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring any agents or consultants, the monitor must provide written notice of the hiring and the rate of compensation to Settling Defendants and the United States.

F. The monitor must account for all costs and expenses incurred.

G. The monitor will have the authority to take such reasonable steps as, in the United States' view, may be necessary to accomplish the monitor's duties. The monitor may seek information from Settling Defendants' personnel, including in-house counsel, compliance personnel, and internal auditors. If the monitor has confidence in the quality of the resources, the monitor may consider the products of Settling Defendants' processes, such as the results of studies, reviews, sampling and testing methodologies, audits, and analyses conducted by or on behalf of any Settling Defendant, as well as any of Settling Defendants' internal resources (e.g., legal, compliance, and internal audit), which may assist the monitor in carrying out the monitor's duties). The Settling Defendants will establish a policy, annually communicated to all employees, that employees may disclose any information to the monitor, without reprisal for such disclosure.

H. Settling Defendants must use best efforts to cooperate fully with the monitor. Subject to reasonable protection for trade secrets and confidential research, development, or commercial information, or any applicable privileges or laws, Settling Defendants must (1) provide the monitor and agents or consultants retained by the monitor with full and complete access to all personnel, books, records, and facilities, and (2) use reasonable efforts to provide the monitor with access to Settling Defendants' former employees, Growers, third-party vendors, agents, and consultants. Settling Defendants may not take any action to interfere with or to impede accomplishment of the monitor's responsibilities.

I. If Settling Defendants seek to withhold from the monitor access to anything or anyone on the basis of attorney-client privilege or the attorney work-product doctrine, or because Settling Defendants reasonably believe providing the monitor with access would be inconsistent with applicable law, the Settling Defendants must work cooperatively with the monitor to resolve the issue to the satisfaction of the monitor. If Settling Defendants and the monitor do not reach a resolution of the issue to the satisfaction of the monitor within 21 calendar days, Settling Defendants must immediately provide written notice to the United States and the monitor. The written notice must include a description of what is being withheld and the Settling Defendants' legal basis for withholding access.

J. Except as specifically provided by Paragraph VI(I), Settling Defendants may not object to requests made or actions taken by the monitor in fulfillment of the monitor's responsibilities under this Final Judgment or any other Order of the Court on any ground other than malfeasance by the monitor; *provided, however*, that if Settling Defendants believe in good faith that a request or action by the monitor pursuant to the monitor's authority under Paragraph VI(B)(2) exceeds the scope of the monitor's authority or is unduly burdensome, the Settling Defendants may object to the United States. Objections by Settling Defendants under this Paragraph VI(J) regarding a request or action exceeding the monitor's scope must be conveyed in writing to the United States and the monitor within 10 calendar days of the monitor's request or action that gives rise to Settling Defendants' objection. Objections by Settling Defendants under this Paragraph VI(J) regarding a request or action being unduly burdensome must be made, with specificity, to the monitor within seven calendar days of the request or action; if the Settling Defendants and the monitor cannot resolve the objections regarding a request or action being unduly burdensome, within 21 days of the request or action the Settling

Defendants must convey their objections in writing to the United States. All objections will be resolved by the United States, in its sole discretion.

K. The monitor must investigate and report on Settling Defendants' compliance with this Final Judgment, including those provisions governing Settling Defendants' communications with Poultry Processors and third parties related to Poultry Processing Worker Compensation information, and Settling Defendants' compliance, regarding events occurring after entry of the Stipulation and Order in this case (even if such events began before that date), with the U.S. federal antitrust laws relating to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry Processing products.

L. The monitor must provide periodic written reports to the United States and the Settling Defendants setting forth Settling Defendants' efforts to comply with their obligations under this Final Judgment and the U.S. federal antitrust laws relating to Poultry Processing, Poultry Processing Workers, Growers, integrated Poultry feed, hatcheries, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry Processing products. The monitor must provide written reports every six months for the first two years of the term of the monitor's appointment after which the monitor must provide written reports on an annual basis. The monitor must provide the first written report within six months of the monitor's appointment by the Court. The United States, in its sole discretion, may change the frequency of the monitor's written reports at any time, communicate or meet with the monitor at any time, and make any other requests of the monitor as the United States deems appropriate.

M. Within 30 days after appointment of the monitor by the Court, and on a yearly basis thereafter, the monitor must provide to the United States and Settling Defendants a written work plan for the monitor's proposed review. Settling Defendants

may provide comments on a written work plan to the United States and the monitor within 14 calendar days after receipt of the written work plan. The United States retains the right, in its sole discretion, to request changes or additions to a work plan at any time. Any disputes between Settling Defendants and the monitor with respect to any written work plan will be decided by the United States in its sole discretion.

N. The monitor will serve for the full term of this Final Judgment, unless the United States, in its sole discretion, determines a different period is appropriate. After five years from the date this Final Judgment was entered, the United States, in its sole discretion, will determine whether continuation of the monitor's full term is appropriate, or whether to suspend the remainder of the term.

O. If the United States determines that the monitor is not acting diligently or in a reasonably cost-effective manner or if the monitor becomes unable to continue in their role for any reason, the United States may recommend that the Court appoint a substitute.

VII. REQUIRED CONDUCT

A. Within 10 days of entry of this Final Judgment, each Settling Defendant must appoint an antitrust compliance officer who is an internal employee or officer of each of the Settling Defendants and identify to the United States the antitrust compliance officer's name, business address, telephone number, and email address. Within 45 days of a vacancy in the antitrust compliance officer position, Settling Defendants must appoint a replacement, and must identify to the United States the antitrust compliance officer's name, business address, telephone number, and email address. Settling Defendants' initial or replacement appointment of an antitrust compliance officer is subject to the approval of the United States, in its sole discretion.

B. Each Settling Defendant's antitrust compliance officer must have, or must retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and

2. have at least five years' experience in legal practice, including experience with antitrust matters.

C. Each Settling Defendant's antitrust compliance officer must, directly or through the employees or counsel working at the direction of the antitrust compliance officer:

1. within 14 days of entry of the Final Judgment, furnish to the relevant Settling Defendant's Management, all Human Resources Staff, and the relevant Settling Defendants' retained Consulting Firms and utilized temporary employment agencies a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;

2. within 14 days of entry of the Final Judgment, in a manner to be devised by Settling Defendants and approved by the United States, in its sole discretion, provide the relevant Settling Defendants' Management, all Human Resources Staff, and the relevant Settling Defendant's retained Consulting Firms and utilized temporary employment agencies reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief the relevant Settling Defendants' Management, Human Resources Staff, and the relevant Settling Defendant's retained Consulting Firms and utilized temporary employment agencies on the meaning and requirements of this Final Judgment and the U.S. federal antitrust laws;

4. brief any person who succeeds a person in any position identified in Paragraph VII(C)(3) within 60 days of such succession;

5. obtain from each person designated in Paragraph VII(C)(3) or VII(C)(4), within 30 days of that person's receipt of the Final Judgment, a certification

that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment or of any violation of any U.S. antitrust law that has not been reported to the relevant Settling Defendant's Management; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to the relevant Settling Defendant's Management and Human Resources Staff, and the relevant Settling Defendant's retained Consulting Firms and utilized temporary employment agencies that they may disclose to the antitrust compliance officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. federal antitrust laws by Settling Defendants; and

7. maintain for five years or until expiration of the Final Judgment, whichever is longer, a copy of all materials required to be issued under Paragraph VII(C), and furnish them to the United States within 10 days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine.

D. Each Settling Defendant must:

1. within 30 days of the filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, whichever is latest, provide notice to every Poultry Processor and to every Consulting Firm with which that Settling Defendant has a contract or Agreement in place relating to Compensation for Poultry Processing Workers, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Settling Defendants and approved by the United States, in its sole discretion. Settling Defendants must provide the United States with their proposals, including their lists of recipients, within 10 days of the filing of the Complaint;

2. for all materials required to be furnished under Paragraph VII(C) that Settling Defendants claim are protected under the attorney-client privilege or the attorney work-product doctrine, Settling Defendants must furnish to the United States a privilege log;

3. upon Management or the antitrust compliance officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain, and produce to the United States upon request, all documents related to any violation or potential violation of this Final Judgment;

4. file with the United States a statement describing any violation or potential violation within 30 days of a violation or potential violation becoming known to Management or the antitrust compliance officer. Descriptions of violations or potential violations of this Final Judgment must include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication;

5. have their Chief Executive Officers or President certify to the United States annually on the anniversary date of the entry of this Final Judgment that the Settling Defendants have complied with all of the provisions of this Final Judgment, and list all Agreements subject to Paragraph V(C) from the prior year; and

6. maintain and produce to the United States upon request: (i) a list identifying all employees having received the antitrust briefings required under Paragraphs VII(C)(3) and VII(C)(4); and (ii) copies of all materials distributed as part of the antitrust briefings required under Paragraph VII(C)(3) and VII(C)(4). For all materials requested to be produced under this Paragraph VII(D)(6) that a Settling Defendant claims

is protected under the attorney-client privilege or the attorney work-product doctrine, Settling Defendant must furnish to the United States a privilege log.

E. Within 75 business days after entry of this Final Judgment, the Settling Defendants must offer each Grower supplying broiler chickens for processing in the Settling Defendants' facilities a modification of such Grower's contract (1) providing for a Base Payment no lower than that Grower's Base Payment for a given type of flock (e.g., based on sex, breed, method of raising, target market weight, etc.) and (2) eliminating any provision permitting a Settling Defendant to reduce the Base Payment provided to a Grower in a manner prohibited by Paragraph IV(C); *provided, however*, that a Grower's refusal to accept such modification will not relieve Settling Defendants of their obligations pursuant to Paragraph IV(C).

F. Within 80 business days after entry of this Final Judgment, the Settling Defendants must each furnish to the United States an affidavit affirming that it has offered the contractual modifications required by Paragraph IV(C) to each Grower supplying broiler chickens to it for processing.

G. The term "potential violation" as used in this Section VII does not include the discussion with counsel, the antitrust compliance officer, or anyone working at counsel's or the antitrust compliance officer's direction, regarding future conduct.

H. Within 75 business days after entry of this Final Judgment, Sanderson and Wayne must comply with the Disclosure Requirements, which are made part of this Final Judgment, and hereby incorporated into this Final Judgment by reference. The preceding sentence does not apply if during the term of this Final Judgment, the USDA promulgates final regulations imposing different disclosure requirements relating to payments to Growers, including a final version of the regulations discussed in the "Transparency in Poultry Grower Contracting and Tournaments," a proposed rule by the Agricultural Marketing Service, June 8, 2022, 87 FR 34980, *available at*

<https://www.federalregister.gov/documents/2022/06/08/2022-11997/transparency-in-poultry-grower-contracting-and-tournaments>, as long as the final version of such regulation or any amended version thereof remains in effect, in which case Settling Defendants must comply with the final or amended regulations. If at any point there is no longer a final or amended version in effect, Sanderson and Wayne must again comply with the Disclosure Requirements.

VIII. REQUIRED COOPERATION

A. Settling Defendants must cooperate fully and truthfully with the United States in any investigation or litigation relating to the sharing of Poultry Processing Worker Compensation information among Poultry Processors, in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Settling Defendants must use their best efforts to ensure that all current officers, directors, employees, and agents also fully and promptly cooperate with the United States and use reasonable efforts to ensure that all former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Settling Defendants must include:

1. as requested on reasonable notice by the United States, being available for interviews, depositions, and providing sworn testimony to the United States orally and in writing as the United States so chooses;
2. producing, upon request of the United States, all documents, data, information, and other materials, wherever located, not protected under the attorney-client privilege or attorney work product doctrine, in the possession, custody, or control of that Settling Defendant, and a privilege log of any materials the Settling Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine; and

3. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States.

B. The obligations of Settling Defendants to cooperate fully and truthfully with the United States as required in this Section VIII will cease upon the conclusion of all investigations and litigation related to the sharing of Poultry Processing Worker Compensation information in violation of Section 1 of the Sherman Act, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in this matter, or the expiration of the Final Judgment, whichever is later.

C. Settling Defendants must take all necessary steps to preserve all documents and information relevant to the United States' investigations and litigation alleging that Settling Defendants and other Poultry Processors shared Poultry Processing Worker Compensation information in violation of Section 1 of the Sherman Act until the United States provides written notice to the Settling Defendants that their obligations under this Section VIII have expired.

D. Subject to the full, truthful, and continuing cooperation of each Settling Defendant, as required under this Section VIII, Settling Defendants are fully and finally discharged and released from any civil or criminal claim by the United States arising from the sharing of Poultry Processing Worker Compensation information among Poultry Processors prior to the date of filing of the Complaint in this action; *provided, however*, that this discharge and release does not include any criminal claim arising from any subsequently-discovered evidence of an Agreement to fix prices or wages or to divide or allocate markets, including to allocate Poultry Processing Workers.

E. Paragraph VIII(D) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401-402), or obstruction of justice (18 U.S.C. § 1503, et seq.) by any Settling Defendant.

IX. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Settling Defendants, Settling Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Settling Defendants' office hours to inspect and copy, or at the option of the United States, to require Settling Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Settling Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Settling Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Settling Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Settling Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

X. RESTITUTION

A. Within 60 days of entry of this Final Judgment, each Settling Defendant must place funds equal to 10% of its own Restitution Amount into an escrow account selected by the United States, in its sole discretion. Each Settling Defendant must have its own escrow account.

B. If the *Jien* Court grants a motion for final approval of a settlement and certification of a settlement class with respect to a Settling Defendant's settlement with the *Jien* plaintiffs, the entire balance of that Settling Defendant's escrow account, including any accrued interest and less any administrative costs, must be returned to that Settling Defendant.

C. If any Settling Defendant has not entered into a settlement agreement with the plaintiffs in *Jien* before entry of this Final Judgment, or if preliminary or final approval of a settlement is denied, or if certification of a settlement class is denied, or if a settlement is terminated or rescinded for any reason, any affected Settling Defendant, within 21 days after (1) entry of this Final Judgment in the case of a Settling Defendant who has not reached a settlement agreement with the plaintiffs in *Jien*, or (2) any order denying settlement approval or certification of the settlement class or any termination or rescinding of a settlement, must deposit into its escrow account an amount equal to its Restitution Amount. This amount must be in addition to the initial 10% payment made pursuant to Paragraph X(A) and any accrued interest already present in the Settling Defendant's escrow account. Upon full funding of the escrow account, the entire balance of the escrow account, including any accrued interest, must be released to the United States for distribution to affected Poultry Processing Workers in the form of restitution and payment for expenses related to distribution. In the event that preliminary or final approval of a settlement or class certification is denied, or the settlement agreement is rescinded or terminated, for reasons that the United States in its sole discretion believes to be curable, the United States, in its sole discretion, may agree to one or more extensions of the 21-day period in this Paragraph X(C).

D. The claims and disbursement process will be established in the sole discretion of the United States. Settling Defendants must reimburse the United States for any costs associated with claims administration or remittance of restitution, including

fees payable to a third-party claims administrator hired at the United States' sole discretion, that extend beyond the sum of the initial 10% payments made by each Settling Defendant under Paragraph X(A). Contributions beyond the initial 10% payments will be made on a pro rata basis based on each Settling Defendant's Restitution Amount.

E. Upon completion of the restitution payments, the United States must return any funds remaining in the escrow account to the Settling Defendants, on a pro rata basis based on each Settling Defendant's Restitution Amount.

XI. PUBLIC DISCLOSURE

A. No information or documents obtained pursuant to any provision in this Final Judgment, including reports the monitor provides to the United States pursuant to Paragraphs VI(K) and VI(L), may be divulged by the United States or the monitor to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. In the event that the monitor should receive a subpoena, court order or other court process seeking production of information or documents obtained pursuant to any provision in this Final Judgment, including reports the monitor provides to the United States pursuant to Paragraphs VI(K) and VI(L), the applicable disclosing party shall notify Settling Defendants immediately and prior to any disclosure, so that Settling Defendants may address such potential disclosure and, if necessary, pursue alternative legal remedies, including if deemed appropriate by Settling Defendants, intervention in the relevant proceedings.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the

provision on confidential commercial information, at 28 C.F.R. § 16.7. Settling Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire 10 years after submission, “unless the submitter requests and provides justification for a longer designation period.” *See* 28 C.F.R. § 16.7(b).

C. If at the time that Settling Defendants furnish information or documents to the United States pursuant to any provision of this Final Judgment, Settling Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Settling Defendants mark each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” the United States must give Settling Defendants 10 calendar days’ notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Settling Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the

appropriateness of a remedy therefor by a preponderance of the evidence, and Settling Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Settling Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that any Settling Defendant has violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Settling Defendant, whether litigated or resolved before litigation, that Settling Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Settling Defendant violated this Final Judgment before it expired, the United States may file an action against that Settling Defendant in this Court requesting that the Court order: (1) Settling Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional

relief needed to ensure the Settling Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIII.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Settling Defendants that continuation of this Final Judgment is no longer necessary or in the public interest. *Provided, however,* that the obligations under Section X will continue as long as one or more of the escrow accounts created under Section X remain open.

XV. RESERVATION OF RIGHTS

The Final Judgment terminates only the claims expressly stated in the Complaint. The Final Judgment does not in any way affect any other charges or claims filed by the United States subsequent to the commencement of this action, including any charges or claims relating to Growers, integrated Poultry feed, hatcheries, Poultry products, the transportation of Poultry and Poultry products, and the sale of Poultry and Poultry products.

XVI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States must be sent to the address set forth below (or such other address as the United States may specify in writing to any Settling Defendant):

Chief
Civil Conduct Task Force
U.S. Department of Justice
Antitrust Division
450 Fifth Street
Washington, DC 20530
ATRJudgmentCompliance@usdoj.gov.

XVII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The Settling Defendants have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

United States District Judge

Exhibit 1

[Version for Management and Human Resources Staff]

[Letterhead of Settling Defendant]

[Name and Address of Antitrust Compliance Officer]

Dear [XX]:

I am providing you this letter to make sure you know about a court order recently entered by a federal judge in [jurisdiction]. This order applies to [Settling Defendant's] Human Resources Staff and Management as defined in Section II (Definitions) of the attached Final Judgment, including you, so it is important that you understand the obligations it imposes on us. [CEO or President Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

Under the order, we are largely prohibited from communicating with other poultry processors, whether directly or indirectly (such as through a consulting agency) about poultry processing plant worker compensation—pay or benefits. This means you may not discuss with any poultry processor or employee of a poultry processor any non-public information about our plant workers' wages, salaries, and benefits, and you may not ask any poultry processor or employee of a poultry processor for any non-public information about their plant workers' wages, salaries, and benefits. In addition, we are largely prohibited from sending any non-public information about our processing plant workers' wages and benefits to any third party, such as a consulting agency. There are only limited exceptions to these prohibitions, which are outlined in Section V (Conduct Not Prohibited) of the Final Judgment.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me. Thank you for your cooperation.

Sincerely,
[Settling Defendant's Antitrust Compliance Officer]

* * *

[Version for Consulting Firms and temporary employment agencies]

[Letterhead of Settling Defendant]

[Name and Address of Antitrust Compliance Officer]

Dear [XX]:

I am providing you this letter to make sure you know about a court order recently entered by a federal judge in [jurisdiction]. This order applies to [Settling Defendant's] Consulting Firms as defined in Section II (Definitions) of the attached Final Judgment and temporary employment agencies, including your agency, so it is important that you understand the obligations it imposes on us. [CEO or President Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

Under the order, we are largely prohibited from communicating with other poultry processors, whether directly or indirectly (such as through a Consulting Firm or temporary employment agency, including your agency) about poultry processing plant worker compensation—pay or benefits. This means you may not disclose to us any non-public information about another poultry processor's plant workers' wages, salaries, and benefits, and you may not provide any non-public information about our poultry plant workers' wages, salaries, and benefits to another poultry processor. In addition, we are largely prohibited from sending any non-public information about our processing plant workers' wages and benefits to any third party, such as a Consulting Firm or temporary employment agency, including your agency. There are only limited exceptions to these prohibitions, which are outlined in Section V (Conduct Not Prohibited) of the Final Judgment.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me.

Thank you for your cooperation.

Sincerely,
[Settling Defendant's Antitrust Compliance Officer]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARGILL MEAT SOLUTIONS CORP.,
et. al.,

Defendants.

Civil Action No.: 22-cv-1821
(Gallagher, J.)

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on July 25, 2022, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

AND WHEREAS, the United States and Defendants Webber, Meng, Sahl & Company, Inc. d/b/a/ WMS & Company, Inc. and G. Jonathan Meng (collectively, “Settling Defendants”) have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

AND WHEREAS, Settling Defendants agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

AND WHEREAS, Settling Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

XVIII. JURISDICTION

This Court has jurisdiction over the subject matter of this action and each of the parties named herein. The Complaint states a claim upon which relief may be granted against the Settling Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

XIX. DEFINITIONS

As used in this Final Judgment:

Y. “WMS” means Defendant Webber, Meng, Sahl and Company, Inc., d/b/a WMS & Company, Inc., a Pennsylvania corporation with its headquarters in Pottstown, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their partners, directors, officers, managers, agents, and employees.

Z. “Meng” means Defendant G. Jonathan Meng, who resides in Silverthorne, Colorado, and is President of WMS.

AA. “Agreement” means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

BB. “Communicate” means to discuss, disclose, transfer, disseminate, circulate, provide, request, solicit, send, receive or exchange information or opinion, formally or informally, directly or indirectly, in any manner, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, including surveys, or face-to-face meetings.

CC. “Compensation” means all forms of payment for work, including salaried pay, hourly pay, regular or ad hoc bonuses, over-time pay, and benefits, including healthcare coverage, vacation or personal leave, sick leave, and life insurance or disability insurance policies.

DD. “Confidential Competitively Sensitive Information” means non-public information that is relevant to, or likely to have an impact on, at least one dimension of competition (including price, cost including Compensation, output, quality, and innovation). Confidential Competitively Sensitive Information includes prices, strategic plans, amounts and types of Compensation, other information related to costs or profits, markets, distribution, business relationships, customer lists, production capacity, and any confidential information the exchange of which could harm competition.

EE. “Including” means including, but not limited to.

FF. “Non-public information” means information that is not available from public sources and generally not available to the public.

GG. “Person” means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

HH. “Poultry Processing” means the business of raising, slaughtering, cleaning, packing, packaging, and otherwise producing of poultry, including activities conducted at feed mills, hatcheries, and processing plant facilities and the management of those activities.

II. “Poultry Processor” means any person engaged in Poultry Processing or that owns or controls, in full or part, Poultry Processing facilities, or that provides Compensation to Poultry Processing workers.

XX. APPLICABILITY

This Final Judgment applies to Settling Defendants and all other persons in active concert or participation with either of them who receive actual notice of this Final Judgment.

XXI. PROHIBITED CONDUCT

E. Settling Defendants must not provide services directly or indirectly to any person for the purpose of conducting or otherwise facilitating any exchange, including by survey, of Confidential Competitively Sensitive Information among one or more persons. Provided, however, Settling Defendants may continue to provide any such services until January 1, 2023, pursuant to any agreements that are in effect as of July 25, 2022.

F. Settling Defendants must not organize, speak at, participate in, or join in any form, whether in-person or virtually, any meeting of members of the same trade, industry, or profession that is not open to the public, so long as the subject of the meeting is related to either (i) Poultry Processing or (ii) the exchange, including by survey, of Confidential Competitively Sensitive Information among one or more persons.

G. Settling Defendants must not Communicate non-publicly, directly or indirectly (including through the use of a common consultant), with any Poultry Processor or any of its officers, consultants, attorneys, or other representatives.

H. Settling Defendants must not knowingly accept from any Poultry Processor or any of its officers, employees, agents, consultants, attorneys or other representatives any Confidential Competitively Sensitive Information about Compensation or any other aspect of Poultry Processing.

I. Settling Defendants must not: (a) participate in any non-public discussion of Compensation in Poultry Processing; (b) facilitate the formation of any agreement related to Compensation, including how to set or decide Compensation for workers or the amount of Compensation for workers, between or among Poultry Processors; (c) communicate with any person about types, amounts, or methods of setting or negotiating Compensation for Poultry Processing workers; or (d) knowingly accept any non-public Compensation information from or about any Poultry Processor.

J. Notwithstanding the prohibitions in this Section IV, Settling Defendants are permitted to have discussions and receive and give information regarding the Poultry Processing industry in connection with pending or threatened litigation as a party or fact witness, either pursuant to subpoena or similar legal process, or for which one or both Settling Defendants has or have received prior approval in writing of the United States.

XXII. REQUIRED CONDUCT

E. Settling Defendants must provide the United States with a full and complete copy of any survey result or other project either Settling Defendant conducts between [settlement filing date] and December 31, 2022 that directly or indirectly involves or facilitates the exchange, including by survey, of Confidential Competitively Sensitive Information among one or more persons.

F. Upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, Settling Defendants must (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with the Final Judgment, (ii) maintain all documents related to any violation or potential violation of the Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents for which Settling Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exists.

G. Within thirty days of learning of any such violation or potential violation of any of the terms and conditions contained in this Final Judgment, Settling Defendants must file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which must include a description of any communications constituting the violation or potential violation,

including the date and place of the communication, the persons involved, and the subject matter of the communication.

H. Each of Meng and the most senior employee at WMS must certify in writing to the United States annually on each anniversary of the date of entry of this Final Judgment that Meng or WMS (as appropriate) has complied with the provisions of this Final Judgment.

XXIII. SETTLING DEFENDANTS' COOPERATION

F. Each Settling Defendant must cooperate fully and truthfully with the United States in any investigation or litigation relating to the sharing of Compensation information among Poultry Processors, in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended. WMS must use its best efforts to ensure that all current and former officers, directors, employees, and agents of WMS also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of each Settling Defendant must include:

4. as requested on reasonable notice by the United States, being available for interviews, depositions, and providing sworn testimony to the United States orally and in writing;
5. producing, upon request of the United States, all documents, data, information, and other materials, wherever located not protected under the attorney-client privilege or attorney work product doctrine, in the possession, custody, or control of that Settling Defendant, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine; and
6. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States.

G. The obligations of each Settling Defendant to cooperate fully and truthfully with the United States as required in this Section VI shall cease upon the

conclusion of the sooner of: (i) when all Defendants have settled all claims in this matter and all settlements have been entered by this Court and become final, or (ii) the conclusion of all investigations and litigation alleging that Settling and non-Settling Defendants shared Compensation information in violation of Section 1 of the Sherman Act, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in this matter.

H. Each Settling Defendant must take all necessary steps to preserve all documents and information relevant to the United States' investigations and litigation alleging that Settling Defendants and non-Settling Defendants shared Compensation information in violation of Section 1 of the Sherman Act until the United States provides written notice to the Settling Defendant that its obligations under this Section VI have expired.

I. Subject to the full, truthful, and continuing cooperation of each Settling Defendant, as required in this Section VI, Settling Defendants are discharged from any civil or criminal claim by the United States arising from the sharing of Compensation information among Poultry Processors, when the sharing of Compensation information (1) occurred before the date of filing of the Complaint in this action, and (2) does not constitute or include an agreement to fix prices or divide markets.

J. Paragraph VI(D) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401-402), or obstruction of justice (18 U.S.C. § 1503, et seq.) by either Settling Defendant.

XXIV. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for

the Antitrust Division, and reasonable notice to Settling Defendants, Settling Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Settling Defendants' office hours to inspect and copy, or at the option of the United States, to require Settling Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Settling Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Settling Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Settling Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Settling Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

XXV. PUBLIC DISCLOSURE

F. No information or documents obtained pursuant to any provision this Final Judgment may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

G. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, for disclosure of information obtained pursuant to any

provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Settling Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire 10 years after submission, “unless the submitter requests and provides justification for a longer designation period.” *See* 28 C.F.R. § 16.7(b).

H. If at the time that Settling Defendants furnish information or documents to the United States pursuant to any provision of this Final Judgment, Settling Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Settling Defendants mark each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” the United States must give Settling Defendants 10 calendar days’ notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XXVI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XXVII. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Settling Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final

Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Settling Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Settling Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Settling Defendants have violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to

ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section X.

XXVIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Settling Defendants that continuation of this Final Judgment is no longer necessary or in the public interest.

XXIX. RESERVATION OF RIGHTS

The Final Judgment shall terminate only the claims expressly stated in the Complaint against Settling Defendants. The Final Judgment shall not in any way affect any other charges or claims filed by the United States subsequent to the commencement of this action.

XXX. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States shall be sent to the address set forth below (or such other address as the United States may specify in writing to any Settling Defendant):

Chief
Civil Conduct Task Force
U.S. Department of Justice
Antitrust Division
450 Fifth Street
Washington, DC 20530.

XXXI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments

by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARGILL MEAT SOLUTIONS
CORPORATION, *et al.*,

Defendants.

Civil Action No.: 22-cv-1821
(Gallagher, J.)

COMPETITIVE IMPACT STATEMENT

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the “Tunney Act”), the United States of America files this Competitive Impact Statement related to (a) the proposed Final Judgment as to Defendants Cargill Meat Solutions Corp. and Cargill, Inc. (“Cargill”), Wayne Farms, LLC (“Wayne”), and Sanderson Farms, Inc. (“Sanderson”) (collectively, “Processor Settling Defendants”); and (b) the proposed Final Judgment as to Webber, Meng, Sahl and Company, Inc., d/b/a WMS & Company, Inc. (“WMS”) and G. Jonathan Meng (“Meng”) (collectively, “Consultant Settling Defendants”). The Processor Settling Defendants and the Consultant Settling Defendants are collectively the “Settling Defendants.”

I. NATURE AND PURPOSE OF THE PROCEEDING

On July 25, 2022, the United States filed a civil Complaint against the Settling Defendants. Count One of the Complaint alleges that the Settling Defendants conspired for two decades or more to assist their competitors in making compensation decisions, to exchange current and future, disaggregated, and identifiable compensation information, and to facilitate this anticompetitive agreement. Together with other poultry processors, which together controlled over 90% of poultry processing plant jobs nationwide, the

Processor Settling Defendants collaborated on decisions about poultry plant worker compensation, including through the direct exchange of compensation information. This conspiracy suppressed competition in the nationwide and local labor markets for poultry processing. Their agreement distorted the competitive process, disrupted the competitive mechanism for setting wages and benefits, and harmed a generation of poultry processing plant workers by unfairly suppressing their compensation.

The Complaint alleges that, from 2000 or before to the present, the Processor Settling Defendants, Consulting Settling Defendants, and their poultry processing and consultant co-conspirators exchanged compensation information through the dissemination of survey reports in which they shared current and future, detailed, and identifiable plant-level and job-level compensation information for poultry processing plant workers. The shared information allowed poultry processors to determine the wages and benefits their competitors were paying—and planning to pay—for specific job categories at specific plants.

The Complaint further alleges that the Processor Settling Defendants and their co-conspirators met in person at annual meetings. From at least 2000 to 2002 and 2004 to 2019, the Consultant Settling Defendants facilitated, supervised, and participated in these annual in-person meetings among the Processor Settling Defendants and their co-conspirators and facilitated their exchange of confidential, competitively sensitive information about poultry plant workers.

The Processor Settling Defendants' and their co-conspirators' collaboration on compensation decisions and exchange of competitively sensitive compensation information extended beyond the shared survey reports and in-person annual meetings. As alleged in the Complaint, from 2000 to the present, the Processor Settling Defendants and their co-conspirators repeatedly contacted each other to seek and provide advice and assistance on compensation decisions, including by sharing further non-public

information regarding each other's wages and benefits. This demonstrates a clear agreement between competitors to ask for help with compensation decisions and to provide such help to others upon request.

In sum, this conspiracy, from at least 2000 to the present, permitted the Processor Settling Defendants and their co-conspirators to collaborate with and assist their competitors in making decisions about worker compensation, including wages and benefits, and to exchange information about current and future compensation plans. Through this conspiracy, the Processor Settling Defendants artificially suppressed compensation for poultry processing workers.

Count Two of the Complaint further alleges that Defendants Sanderson and Wayne acted deceptively in the manner in which they compensated poultry growers, the farmers who raise poultry for slaughter, in violation of Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 192(a).

At the time the Complaint was filed, the United States also filed a proposed Final Judgment and Stipulation and Order with respect to the Processor Settling Defendants and separately a proposed Final Judgment and Stipulation and Order with respect to the Consultant Settling Defendants, each of which is designed to remedy the anticompetitive effects resulting from the harm alleged in the Complaint. The terms in the proposed Final Judgment for the Processor Settling Defendants resolving Count Two of the Complaint (relating to the Packers and Stockyards Act) are not subject to review under the Tunney Act. However, the United States has included an explanation of these terms in the Competitive Impact Statement.

The proposed Final Judgment for the Processor Settling Defendants, explained more fully below, requires:

- a. the Processor Settling Defendants to end their agreement to collaborate with and assist in making compensation decisions for poultry processing workers

and their anticompetitive exchange of compensation information with other poultry processors;

- b. the Processor Settling Defendants to submit to a monitor (determined by the United States in its sole discretion) for a term of 10 years, who will examine the Processor Settling Defendants' compliance with both the terms of the proposed Final Judgment and U.S. federal antitrust law generally, across their entire poultry businesses;
- c. the Processor Settling Defendants to provide significant and meaningful restitution to the poultry processing workers harmed by their anticompetitive conduct, who should have received competitive compensation for their valuable, difficult, and dangerous labor;
- d. Defendants Wayne and Sanderson to eliminate penalties assessed against growers based on comparative performance; and
- e. Defendants Wayne and Sanderson to make appropriate disclosures to growers before entering into contracts concerning live poultry, to provide sufficient information for the growers to understand the scope of the contract and the potential risks.

The proposed Final Judgment for the Processor Settling Defendants also prohibits the Processor Settling Defendants from retaliating against any employee or third party, such as a grower, for disclosing information to the monitor, an antitrust enforcement agency, or a legislature, and includes other terms discussed below.

Under the proposed Final Judgment for the Consultant Settling Defendants, explained more fully below, Consultant Settling Defendants are restrained and enjoined from:

- a. providing survey services involving confidential competitively sensitive information;

- b. participating in non-public trade association meetings that involve either the exchange of confidential competitively sensitive information or involve the business of poultry processing; and
- c. engaging in non-public communications with any person engaged in the business of poultry processing other than as a party or fact witness in litigation, among other terms.

The Stipulations and Orders for the Processor Settling Defendants and the Consultant Settling Defendants require all Settling Defendants to abide by and comply with the provisions of their respective proposed Final Judgments until they are entered by the Court or until the time for all appeals of any Court ruling declining entry of the respective proposed Final Judgments has expired.

The United States has stipulated with the Processor Settling Defendants and with the Consultant Settling Defendants that the proposed Final Judgments as to each of these groups of Settling Defendants may be entered after compliance with the Tunney Act. Entry of each of the proposed Final Judgments will terminate this action as to the respective Settling Defendants, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgments and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Processor Settling Defendants' Anticompetitive Agreement to Collaborate on Compensation, Including Through their Anticompetitive Exchange of Compensation Information Facilitated by the Consultant Settling Defendants

The Complaint alleges that the Processor Settling Defendants agreed to collaborate with and assist each other and their co-conspirators in making decisions about wages and benefits for their poultry processing plant workers, exchanged competitively sensitive information, and facilitated the exchange of each other's competitively sensitive

information. This agreement includes more than 20 years of discussions about current and future compensation plans and exchanges of compensation information between and among the Processor Settling Defendants and their co-conspirators, who collectively held market power over local and the nationwide markets for poultry plant workers. This conspiracy, while including detailed exchanges of information about current and future wage and benefit policies and amounts, went well beyond the sharing of information and included individual processor-to-processor consultation and advice-giving on decisions that were competitively sensitive and should have been made independently.

From 2000 or earlier to the present, the Processor Settling Defendants and their co-conspirators collaborated on compensation decisions, including by discussing, giving advice, and sharing with each other their competitively sensitive compensation information—rather than each individual firm making its own decisions regarding poultry processing plant worker compensation. This collaboration related to compensation topics such as current wages and benefits, planned and contemplated future wage raises, and changes to benefits, at a nationwide level, at a regional level, and at the individual plant or individual job category level. The Processor Settling Defendants and their co-conspirators engaged in such collaborations via correspondence and at annual in-person meetings, at which they explicitly discussed poultry processing plant worker compensation, and to which they brought competitively sensitive compensation information.

As part of their collaboration, the Processor Settling Defendants and their co-conspirators exchanged confidential, current and future, disaggregated, and identifiable compensation information related to poultry processing workers with each other, both directly and through facilitation by the Consultant Settling Defendants and other data consultants, from at least 2000 to the present. Their exchange of information through the Consultant Settling Defendants included an annual survey designed and controlled by the

Processor Settling Defendants and their co-conspirators. The survey compiled and disseminated information to competitors about current compensation and planned or contemplated changes in plant worker wages and salaries. The survey reported compensation and benefits data for standardized job categories at the Processor Settling Defendants' and their co-conspirators' individual processing plants.

From their information exchanges, the Processor Settling Defendants knew how, and how much, their competitors were compensating their poultry processing plant workers at both a nationwide and a local level.

B. The Competitive Effects of the Conduct

The Complaint alleges that the Processor Settling Defendants' and their co-conspirators' agreement to collaborate on compensation decisions, including through the anticompetitive exchange of compensation information, distorted the competitive mechanism of local and nationwide markets for poultry processing plant labor. By doing so, this conspiracy harmed a generation of poultry processing plant workers by artificially suppressing their wages and benefits for decades.

Poultry processors are distinguishable from other kinds of employers from the perspective of poultry processing plant workers. Many poultry processing plant jobs are dangerous and require physical stamina and tolerance of unpleasant conditions. Poultry processing workers also develop common skills or industry-specific knowledge in poultry processing work, making such workers most valuable to other poultry processing plants. Additionally, many poultry processing plant workers face constraints that reduce the number of jobs and employers available to them, limiting the number of competitors for their labor. For example, workers who cannot speak, read, or write English or Spanish can still perform poultry processing plant line work. Similarly, workers with criminal records, probation status, or lack of high school or college education are often able to work at poultry processing plants even when other jobs are not available to them. Finally,

many poultry processing plants are located in rural areas, in which workers often have fewer job alternatives—especially for full-time, year-round work—as compared to workers in other areas. Thus, other jobs are not reasonable substitutes for poultry processing plant jobs.

In local poultry processing labor markets, defined by the commuting distance between workers' homes and poultry processing plants, the Processor Settling Defendants and their co-conspirators control more than 80% of poultry processing jobs—and in some areas, likely 100%—and thus collectively have market power in those local markets. The Processor Settling Defendants and their co-conspirators also together control over 90% of poultry processing jobs nationwide, giving them market power in the nationwide labor market for poultry processing plant work.

The Processor Settling Defendants' agreement to collaborate on compensation decisions and accompanying exchange of information related to compensation, which was anticompetitive even standing alone, distorted the normal wage-setting and benefits-setting mechanisms in the processor plant worker labor market, thereby harming the competitive process. Because the collaboration and the shared compensation information facilitated by the Consultant Settling Defendants allowed the Processor Settling Defendants and their co-conspirators to understand more precisely what their competitors were paying, or were planning to pay, for processing plant worker compensation, they were able to pay less compensation than they otherwise would have in a competitive labor market. In contrast, the Processor Settling Defendants' workers lacked any comparable information, a clear asymmetry in the market.

In sum, the Processor Settling Defendants' anticompetitive agreement to collaborate on compensation decisions, exchange of compensation information, and facilitation of such (alongside the facilitation of this conduct by the Consultant Settling Defendants) suppressed compensation in the local submarkets and the nationwide market

for poultry processing plant workers to the detriment of hundreds of thousands of processing plant workers, who were financially harmed by such conduct.

C. Deception and Failure to Disclose Information to Poultry Growers

Furthermore, Defendants Wayne and Sanderson acted deceptively to their growers, the farmers responsible for raising the poultry for slaughter. Each grower signs a contract with a single processor, such as Sanderson or Wayne. The processor provides the grower with chicks and feed, among other inputs, and the grower raises the chicken. Growers make substantial financial investments as part of this work, including building or upgrading their facilities but face significant risks (which often include taking on significant debt) in earning a return on such investments.

Processors, including Defendants Wayne and Sanderson, compensate their growers through an established system known as the tournament system, in which growers' payment for their output depends on a base rate, which can be adjusted up or down depending on how growers compare to other growers on various metrics—which the processor selects and controls. In practice, these “performance” adjustments make it difficult for growers to project and manage the risk they face when entering a contract with a processor.

Defendants Wayne and Sanderson do not adequately disclose the risk inherent in this system to the growers. For example, the grower contracts disclose neither the minimum number of flock placements nor the minimum stocking density of those flocks that the grower is guaranteed. The contracts also lack material financial disclosures regarding poultry grower performance, including the range of that performance, and other terms relevant to the financial impact of the grower's investment. Similarly, the contracts omit material information relating to the variability of inputs (on an ongoing basis) that can influence grower performance, including breed, sex, breeder flock age, and health impairments, both at input delivery and at settlement (including information to determine

the fairness of the tournament). Without this information, growers are impaired in their ability to manage any differences in inputs, or evaluate whether to invest in new infrastructure, that may arise from the operation of the tournament system. This failure to disclose is deceptive and violates Section 202(a) of the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 192(a).

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENTS

The relief required by the proposed Final Judgments will remedy the harm to competition alleged in the Complaint.

A. Terms of The Final Judgment Specific to the Processor Settling

Defendants

1. Prohibited Conduct

Section IV of the proposed Final Judgment for the Processor Settling Defendants prevents the Processor Settling Defendants from continuing their collaboration and information-sharing with competing poultry processors about poultry processing worker compensation. Paragraphs IV.A and B prohibit Processor Settling Defendants' employees in management positions or any positions related to compensation from directly or indirectly participating in meetings or gatherings related to compensation for poultry processing workers, communicating with any poultry processor about competitively sensitive information related to poultry processing compensation, or facilitating or encouraging such communications; entering into, attempting to enter into, maintaining, or enforcing any agreement with any poultry processor about compensation for poultry processing workers; or using any such information about another poultry processor's compensation for poultry processing workers. Accordingly, under the proposed Final Judgment, the Processor Settling Defendants may not collaborate on wages and benefits for their workers, may not share confidential wage and benefit information with each other, and may not provide confidential wage and benefit information to any consultants

that produce reports regarding compensation for poultry processing workers, among other prohibited activities.

To ensure that poultry plant workers and third parties such as growers are not punished by the Processor Settling Defendants for raising antitrust or other concerns, Paragraph IV.D. of the proposed Final Judgment prohibits the Processor Settling Defendants from retaliating against any employee or third party for disclosing information to the monitor, a government antitrust agency, or a government legislature.

2. Monitor

Section VI of the proposed Final Judgment for the Processor Settling Defendants provides that the Court will appoint a monitor, selected by the United States in its sole discretion, who will have the power and authority to investigate and report on the Processor Settling Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order. In addition, the monitor will have the power and authority to investigate and report on the Processor Settling Defendants' compliance with the U.S. federal antitrust laws. When investigating and reporting on the Processor Settling Defendants' compliance with the U.S. federal antitrust laws, the monitor may examine all aspects of the Processor Settling Defendants' poultry businesses, including poultry processing, poultry processing workers, growers, integrated poultry feed, hatcheries, transportation of poultry and poultry products, and the sale of poultry and poultry processing products.

The monitor will not have any responsibility or obligation for the operation of the Processor Settling Defendants' businesses. The monitor will serve at the Processor Settling Defendants' expense, on such terms and conditions as the United States approves in its sole discretion. The monitor will have the authority to take reasonable steps as, in the United States' view, may be necessary to accomplish the monitor's duties and the

Processor Settling Defendants must assist the monitor. The monitor will provide periodic reports to the United States and will serve for a term of up to 10 years.

3. Restitution

The Processor Settling Defendants have inflicted financial harm on the hundreds of thousands of poultry plant workers who have labored for them during the term of the conspiracy alleged in the Complaint. These workers perform jobs that are physically demanding, involve high risk of injury, and require tolerance of unpleasant working conditions, in exchange for wages and benefits from the Processor Settling Defendants and their co-conspirators. Because of the conspiracy, those wages and benefits were likely less than they would have been in a free and competitive labor market. For this reason, Section X of the proposed Final Judgment includes a requirement that the Processor Settling Defendants pay restitution to workers harmed by the Processor Settling Defendants' conduct.

The Processor Settling Defendants may satisfy the restitution requirement in the proposed Final Judgment in one of two ways. In an ongoing private antitrust suit brought by a class of nationwide poultry processing workers in this Court, *Jien v. Perdue Farms, Inc.*, No. 1:19-cv-2521 (D. Md.), which involves allegations and claims similar to those in the United States' Complaint, each of the Processor Settling Defendants negotiated a settlement with the plaintiff class. The amounts of the settlements for the respective Processor Settling Defendants are: for Cargill, \$15 million; for Wayne, \$31.5 million; and for Sanderson, \$38.3 million (collectively, the "*Jien* settlements"). If the *Jien* Court grants final approval to the Processor Settling Defendants' *Jien* settlements, the disbursement process approved by the *Jien* Court of the *Jien* settlements satisfies the Processor Settling Defendants' restitution obligation under Section X of the proposed Final Judgment.

Section X of the proposed Final Judgment also sets forth an alternative method by which the Processor Settling Defendants may satisfy their restitution obligations. Under Paragraph X.A. of the proposed Final Judgment, each Processor Settling Defendant must create an escrow account and contribute to its account 10% of the amount of its *Jien* settlement. Under Paragraphs X.C. and X.D. of the proposed Final Judgment, should the *Jien* Court not grant final approval of a Processor Settling Defendant's *Jien* settlement, that Processor Settling Defendant must transfer to its escrow account the entire amount of its *Jien* settlement, so that Processor Settling Defendant's account would contain the full *Jien* settlement amount plus the 10% initially required. The United States would then disburse this fund, minus the cost of administration, to the poultry processing plant workers.

4. Grower Terms

As explained above, the terms in the proposed Final Judgment for the Processor Settling Defendants relating to the Packers and Stockyards Act are not subject to review under the Tunney Act, but the United States has included an explanation of these provisions.

To eliminate the harm arising from the grower compensation systems of Defendants Wayne and Sanderson, which failed to disclose to growers all of the potential risks associated with the grower compensation systems, Paragraph IV.C. of the proposed Final Judgment requires Defendants Wayne and Sanderson to modify their grower compensation systems. The companies may not reduce the base payment made to any grower supplying broiler chicken as a result of that grower's performance, including in comparison with the performance of other growers supplying broiler chickens to the Processor Settling Defendants.

Paragraph VII.E. of the proposed Final Judgment for the Processor Settling Defendants requires Defendants Wayne and Sanderson to offer each grower providing

broiler chickens to one of their plants a modification to such grower's contract to reflect the required modification to grower compensation systems to eliminate the harm arising from each firm's failure to disclose all potential risks to growers. Relatedly, Paragraph VII.H. requires Defendants Wayne and Sanderson to comply with the disclosure requirements in Section V of "Transparency in Poultry Grower Contracting and Tournaments," a proposed rule by the U.S. Department of Agriculture's ("USDA") Agricultural Marketing Service on June 8, 2022, 87 FR 34980, *available at* <https://www.federalregister.gov/documents/2022/06/08/2022-11997/transparency-in-poultrygrower-contracting-and-tournaments>. Accordingly, as required under the USDA's proposed rule, Defendants Wayne and Sanderson must disclose, among other things, the minimum number of flock placements on the poultry grower's farm annually and the minimum stocking density for each flock to be placed on the poultry grower's farm; financial disclosures regarding past performance of growers; and information regarding the grower's placement in the tournament system (including stocking density, breed, sex, age, and health). If during the term of the proposed Final Judgment, the USDA promulgates final regulations imposing different disclosure requirements relating to payments to growers, Defendants Wayne and Sanderson must comply with those regulations instead.

5. Required Conduct, Compliance, and Inspection

The proposed Final Judgment sets forth various provisions to ensure the Processor Settling Defendants' compliance with the proposed Final Judgment.

Paragraph VII.A. of the proposed Final Judgment requires each Processor Settling Defendant to appoint an Antitrust Compliance Officer within 10 days of the Final Judgment's entry. Under Paragraph VII.C. of the proposed Final Judgment, the Antitrust Compliance Officer must furnish copies of this Competitive Impact Statement, the Final Judgment, and a notice approved by the United States explaining the obligations of the

Final Judgment to each Processor Settling Defendant's management and all employees responsible for evaluating or setting compensation for poultry processing workers, among others. The Antitrust Compliance Officer must also obtain from each recipient a certification that he or she has read and agreed to abide by the terms of the Final Judgment, and must maintain a record of all certifications received. Recipients must also certify that they are not aware of any violation of the Final Judgment or any violation of federal antitrust law. Additionally, each Antitrust Compliance Officer must annually brief each person required to receive a copy of the Complaint, Final Judgment and this Competitive Impact Statement on the meaning and requirements of the Final Judgment and the antitrust laws. Each Antitrust Compliance Officer must also annually communicate to all employees that any employee may disclose, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws.

Paragraph VII.D. of the proposed Final Judgment imposes similar notice provisions on the Processor Settling Defendants to ensure that any poultry processor or consulting firm they contract with related to poultry processing compensation also has notice of the Complaint, Final Judgment, and Competitive Impact Statement.

B. Terms of the Final Judgment Specific to the Consultant Settling Defendants

Paragraph IV.A. of the proposed Final Judgment for the Consultant Settling Defendants prohibits the Consultant Settling Defendants from facilitating the exchange of confidential competitively sensitive information, whether by survey or otherwise, among one or more persons. The United States, in its sole discretion, may allow WMS to wind down any contracts for such services, provided such contracts are completed or performance ceases before January 1, 2023. The Consultant Settling Defendants must produce to the United States any reports they create between the date of the filing of the

Complaint and that January 1, 2023 wind-down deadline.

Paragraph IV.B. of the proposed Final Judgment prohibits Consultant Settling Defendants from participating in any non-public meeting of members of the same trade, industry or profession including poultry processing, that relates to the exchange of confidential competitively sensitive information. The United States, in its sole discretion, may allow Consultant Settling Defendants to attend such meetings on a meeting-by-meeting basis.

Paragraphs IV.C., IV.D., IV.E., and IV.F. of Section IV of the proposed Final Judgment prohibit Consultant Settling Defendants from communicating with persons in or associated with the poultry processing industry except as a party or fact witness in litigation.

C. Terms Common to Both of the Final Judgments

For a period of 10 years following the date of entry of the respective Final Judgments, the Settling Defendants separately must certify annually to the United States that they have complied with the provisions of the respective Final Judgments.

Additionally, upon learning of any violation or potential violation of the terms and conditions of the respective Final Judgments, the Settling Defendants, within 30 days, must file with the United States a statement describing the violation or potential violation, and must promptly terminate or modify the activity.

The proposed Final Judgments require each Settling Defendant to provide full, truthful, and continuing cooperation to the United States in any investigation or litigation relating to the sharing of compensation information among poultry processors in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. This cooperation provision requires each Settling Defendant to use its best efforts to effectuate interviews, depositions, and sworn testimony with their current and former employees, officers, directors, and agents and to produce documents, data, and information upon request. The

Settling Defendants' obligation to cooperate lasts for the full term of the proposed Final Judgment or until the conclusion of all investigations and litigations, including appeals, related to sharing poultry processing worker compensation information. Subject to this full, truthful, and continuing cooperation, the Settling Defendants are discharged from any civil or criminal claim by the United States arising from the sharing of compensation information among poultry processors, provided that the information-sharing occurred before the date of the filing of the Complaint and does not include an agreement to fix prices or wages or to divide or allocate markets.

To ensure compliance with the respective Final Judgments, the proposed Final Judgments require each Settling Defendant to grant the United States access, upon reasonable notice, to the Settling Defendant's records and documents relating to matters contained in the Final Judgment. Upon request, the Settling Defendants must also make their employees available for interviews or depositions, answer interrogatories, and prepare written reports relating to matters contained in the Final Judgment.

The proposed Final Judgments also contain provisions designed to make enforcement of the Final Judgment as effective as possible. The proposed Final Judgments provide that the United States retains and reserves all rights to enforce the Final Judgments, including the right to seek an order of contempt from the Court. Under the terms of these provisions, the Settling Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgments, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Settling Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgments with the standard of proof that applies to the underlying offense that the Final Judgments address.

The proposed Final Judgments contain provisions that clarify the interpretation of the proposed Final Judgments. The proposed Final Judgments are intended to remedy the loss of competition the United States alleges occurred because of the Settling Defendants' conduct. The Settling Defendants agree that they will abide by the respective proposed Final Judgments and that they may be held in contempt of the Court for failing to comply with any provision of the respective proposed Final Judgments that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

The proposed Final Judgments provide that if the Court finds in an enforcement proceeding that a Settling Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the relevant Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgments, in any successful effort by the United States to enforce the relevant Final Judgment against a Settling Defendant, whether litigated or resolved before litigation, the Settling Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

The proposed Final Judgments state that the United States may file an action against a Settling Defendant for violating the relevant Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for

four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, each proposed Final Judgment provides that it will expire 10 years from the date of its entry, except that after five years from the date of its entry, each Final Judgment may be terminated upon notice by the United States to the Court and the relevant Settling Defendants that continuation of the relevant Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgments neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgments have no prima facie effect in any subsequent private lawsuit that may be brought against Settling Defendants.

Section 308 of the Packers and Stockyards Act, 7 U.S.C. § 209, provides that any person subject to the Act who violates any provisions of the Act (or of any order of the Secretary of Agriculture relating to the Act) related to the purchase or handling of poultry or any poultry growing arrangement (among other violations) may be liable to persons injured as a result of those violations for the full amount of damages sustained as a consequence, and such injured persons may bring suit in federal court or may complain to the Secretary of Agriculture.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Settling Defendants have stipulated that the respective proposed Final Judgments may be entered by the Court after compliance with the

provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry upon the Court's determination that each proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of a proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment on either or both of the proposed Final Judgments should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to either or both of the proposed Final Judgments at any time before the Court's entry of that Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the *Federal Register* unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Lee F. Berger
Chief, Civil Conduct Task Force
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 8600
Washington, DC 20530

The proposed Final Judgments provide that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgments.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENTS

As an alternative to the proposed Final Judgments, the United States considered a full trial on the merits against the Settling Defendants. The United States could have commenced contested litigation and brought the case to trial, seeking relief including an injunction against the collaboration on compensation decisions, sharing of compensation information, and facilitation of this conduct, as well as the imposition of a monitor. The United States is satisfied, however, that the relief required by the proposed Final Judgments will remedy the anticompetitive effects alleged in the Complaint against the Settling Defendants, preserving competition in the poultry processing plant labor markets and in the poultry processing industry at large, given the relief secured, including the poultry-business-wide monitor. Thus, the proposed Final Judgments achieve all or substantially all of the relief the United States would have obtained through litigation against the Settling Defendants but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE TUNNEY ACT FOR THE PROPOSED FINAL JUDGMENTS

Under the Clayton Act and Tunney Act, proposed Final Judgments, or “consent decrees,” in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court must determine whether entry of a proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint

including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the Tunney Act, a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether a proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by a proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should also bear in mind the *flexibility* of the

public interest inquiry: the court’s function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.” *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would “have enormous practical consequences for the government’s ability to negotiate future settlements,” contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. “The Tunney Act was not intended to create a disincentive to the use of the consent decree.” *Id.*

The United States’ predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft*, 56 F.3d at 1461 (recognizing courts should give “due respect to the Justice Department’s . . . view of the nature of its case”); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (“In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting “the deferential review to which the government’s proposed remedy is accorded”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (“A district court must accord due respect to the government’s prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.”). The ultimate question is whether “the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest.’” *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make

its public interest determination based on the competitive impact statement and response to public comments alone.” *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

The United States considered the “Transparency in Poultry Grower Contracting and Tournaments,” a proposed rule by the U.S. Department of Agriculture’s Agricultural Marketing Service on June 8, 2022, 87 FR 34980, *available at* <https://www.federalregister.gov/documents/2022/06/08/2022-11997/transparency-in-poultrygrower-contracting-and-tournaments>, in formulating the proposed Final Judgment for the Processor Settling Defendants.

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Respectfully submitted,

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